Calendar No. 260

101ST CONGRESS *1st Session*	SENATE	REPORT 101-140

NATIONAL VOTER REGISTRATION ACT OF 1989

REPORT

OF THE

COMMITTEE ON RULES AND ADMINISTRATION

together with

MINORITY AND ADDITIONAL VIEWS

TO ACCOMPANY

S. 874

TO ESTABLISH NATIONAL VOTER REGISTRATION PROCEDURES FOR PRESIDENTIAL AND CONGRESSIONAL ELECTIONS, AND FOR OTHER PURPOSES

SEPTEMBER 26 (legislative day, SEPTEMBER 18), 1989.—Ordered to be printed

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Mr. FORD, from the Committee on Rules and Administration, submitted the following

REPORT

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MINORITY AND ADDITIONAL VIEWS

[To accompany S. 874]

The Committee on Rules and Administration, having considered S. 874, a bill to establish national voter registration procedures for Presidential and Congressional elections, and for other purposes, reports favorably thereon with an amendment in the nature of a substitute, and recommends that the bill as amended do pass.

PURPOSES

The purposes of the bill, as amended, are to establish procedures which will increase registration of eligible citizens in elections for Federal office; to make it possible for Federal, State, and local governments to implement the Act in a manner that enhances the participation of eligible citizens as voters in elections for Federal office; to protect the integrity of the political process; and to assure an accurate and current voter registration roll.

To increase registration of eligible citizens, this bill would require States that require registration to vote in elections for Federal office, to permit voter registration by the following means, in addition to any other method provided by State law: (a) by application simultaneous with an application for a motor vehicle driver's license—so-called "motor-voter" registration; (b) by use of a uni-

form mail application; and (c) by application in person at an agency designated to process registration applications in each State.

The bill would provide procedures and standards regarding the maintenance and confirmation of voter rolls to assure that voters' names are maintained on the rolls so long as they remain eligible to vote in their current jurisdiction and to assure that voters are not required to re-register except upon a change of voting address to one outside their current registration jurisdiction. The bill would not require any mandatory procedure for verifying or confirming voter rolls, but would establish standards for any such procedure a State might employ.

BACKGROUND

On May 1, 1989, Senator Ford introduced S. 874, the National Voter Registration Act of 1989, and it was referred to the Committee on Rules and Administration. The bill was identical to H.R. 15 which was under consideration by the Committee on House Administration of the House of Representatives.

At its hearing on May 3, 1989, the Committee received testimony from Congressman Swift, Chairman of the Subcommittee on Elections of the Committee on House Administration, who had introduced H.R. 15, and Congressman Thomas, a co-sponsor and Ranking Member of that Subcommittee. H.R. 15, referred to as the "motor-voter" registration bill, sought to simplify the registration process by providing for automatic voter registration tied to driver's license applications and renewals, agency-assisted registration and mail registration. Congressmen Swift and Thomas told the Committee that the House bill had been amended and reintroduced as H.R. 2190, which had bipartisan support and was drafted in cooperation with the Civil Rights Coalition supporting national registration legislation and election officials. That measure combined a simple registration process with a procedure for keeping the rolls accurate and current and it gave the Attorney General the authority to regulate the process.

The Committee also received testimony from election officials, who pointed out the difficulties in maintaining accurate voter registration rolls and administering the election process; from an official of the Virginia Department of Motor Vehicles; and from representatives of organizations that support legislation to improve registration, such as the American Civil Liberties Union, The League of Women Voters, and the National Association for the Advancement of Colored People. Spokespersons for the latter organizations urged comprehensive nationwide voter registration procedures to make the electoral process more accessible to all citizens.

The record of hearings held by the Committee during the 100th Congress on voter registration legislation was incorporated into the record of the May 3, 1989 hearing. Senator Cranston, the sponsor of the voter registration bill considered by the Committee during the 100th Congress, told the Committee that the separate components of the legislation—mail registration, agency-based registration, and motor-voter registration—have been tried and have been successful in many states. He also referred to studies that suggested that

voter fraud actually occurred with much less frequency than was alleged; that when it occurred, it was in local and not Federal elections; and that it resulted from the actions of corrupt election officials and not from the system for registering voters. He testified that a national voter registration act was needed to overcome the inadvertent or deliberate barriers to registering which now exist in States where, for example, individuals have to travel long distances or take time off from work to register.

The Honorable Bremer Ehrler, Secretary of State, Commonwealth of Kentucky, informed the Committee that Kentucky had computerized its voter registration system in 1972 and totally reregistered its voters at that time, but that the rolls are again becoming cluttered with the names of ineligible voters. When Secretary of State Ehrler and representatives of the Kentucky County Clerks' Association appeared before the Committee at its May 3, 1989 hearing, they proposed the use of a Federal Post Card Voter Registration Application. They also suggested methods for the maximum distribution of such applications and ways to ensure that voters will stay on the rolls and stay qualified to vote.

The Secretary of State, State of Minnesota, the Honorable Joan Anderson Growe, testified that her State, which often leads the nation in voter turnout in Presidential elections, adopted mail registration in 1973 and found it an effective means of increasing voter participation. In 1987 Minnesota adopted new provisions to further improve registration: voter registration cards were attached to driver's license applications and State income tax booklets, and State and private agencies conducted voter registration. Secretary Growe acknowledged that administrative difficulties resulted from the changes in the system, but believed that her State's voter turnout, the highest in the nation, was due to the variety of ways the people could register to vote.

A witness speaking for the office of the New York State Attorney General testified that mail registration and agency based registration have been used successfully in New York. That State has permanent registration, and in order to determine whether a voter has moved, each year the Board of Elections mails a nonforwardable postcard to each voter. If the postcard is returned, that voter is put on a list and is challenged when attempting to vote. The witness was of the opinion that the current deadlines in his State—registration 30 days prior to a general election and enrollment in a party almost one year prior to a primary election—deter potential voters, and he was in favor of election day registration.

Professor Frances Fox Piven of the City University of New York, after providing the Committee with an historical overview of voter registration barriers, testified that mail, motor-voter and agency registration programs were being undertaken in many States and making some headway. She supported a bill containing provisions for such programs, which would facilitate the development of a list of eligible voters. She and other witnesses pointed out the importance of keeping the application forms as simple as possible and seeing that they were widely available. The Chairman of the Citizens Commission on Civil Rights, Dr. Arthur Flemming, also testified as to the restrictive practices in many States, and in favor of mail, motor-voter and agency registration.

During a discussion on the potential for fraud, Dr. Piven maintained that it had less to do with easier registration than with failure to regularly purge the rolls of the names of those who have died or moved. A spokesperson for the NAACP Legal Defense and Educational Fund, Inc., Ms. Lani Guinier, testified as to studies conducted concerning election fraud, which concluded that: election fraud is most likely to be conducted not by individual voters but by election officials; that it was usually conducted at the voting stage, not at registration; and that many States concerned about fraud do not mail out nonforwardable verification forms or cross-check their rolls with other localities.

A spokesperson for the American Civil Liberties Union expressed the opinion that registration by mail would be a major and significant improvement to current law. In the States that have already adopted mail registration, there is little or no report of problems with fraud. The witness from the NAACP also testified in support of mail registration but indicated that the forms should be simple and uncluttered.

The Director of the Southern Regional Office of the American Civil Liberties Union also testified in favor of establishing national standards for voter registration. His office engages in civil rights and constitutional litigation, challenging barriers to minority political participation, and has represented minority citizens who were denied the right to register and vote. He advised the Committee that a comprehensive set of enforceable Federal rules and rights were needed to replace the current case-by-case approach, in which plaintiffs bear the burden of proof, to combating such discrimination.

COMMITTEE'S FINDINGS

The declining numbers of voters who participate in Federal elections (only about half of the voting age population went to the polls in the 1988 Presidential election) spurred the Committee's search for possible remedies to this situation. The Members are aware that there are multiple and complex factors that contribute to the decline in voter participation in Federal elections. While most contributing factors may not be affected by legislation, one—difficulties encountered by some who desire to register to vote—is susceptible to correction by legislation.

The Committee found that:

(1) the right of citizens of the United States to vote is a fundamental right;

(2) it is the duty of the Federal, State, and local governments to promote the exercise of that right; and

(3) discriminatory and unfair registration laws and procedures can have a direct and damaging effect on voter participation in elections for Federal office and disproportionately harm voter participation by various groups, including racial minorities.

While there may be no conclusive proof that an increase in the voter rolls will automatically or necessarily result in an increase in voter turnout, it is indisputable that it will increase the number of persons eligible to vote. There are also significant indications that

most of those who are eligible to vote, do so. The most common excuse given by individuals for not voting is that they are not registered. The Congressional Research Service has indicated that only approximately 61 percent of those eligible to vote are registered, so that even with an enthusiastic electorate the participation rate by eligible voters would be unimpressive. It has been found, however, that over three-quarters of those who do register, do actually vote, at least in Presidential elections. The Bureau of the Census puts the figure for voter turnout of registered voters in Presidential elections at between 85% and 90%.

Several witnesses at the Committee's hearings testified that registration procedures in the United States are not uniform and that discriminatory and restrictive practices that deter potential voters are employed by some States. Throughout the history of this country there have been attempts to keep certain groups of citizens form registering to vote—which groups specifically depending on the decade and the locale. Among the techniques developed in the various localities to inhibit or exclude potential voters were annual registration, selective purging of the voter rolls, literacy tests and poll taxes. The Voting Rights Act of 1965 made most of these restrictive practices illegal, yet discriminatory and unfair practices still exist and deprive some citizens of their right to vote. The Committee intends by this legislation to provide uniform national voter registration procedures for Presidential and Congressional elections and thereby further the procedural reform intended by the Voting Rights Act.

Some restrictive practices in the voting process arise from the attempts of States to respond to the legitimate administrative concerns of election officials, such as the detection and prevention of fraud, the maintenance of accurate and up-to-date voter rolls, and the removal of the names of ineligible persons from the rolls. These tasks are made particularly difficult by the mobility of our population.

In fashioning this bill the Committee has been concerned with the impact of a regulation or practice on the exercise of the right to vote and not with the question of whether its impact was intentional or inadvertent. Every effort has been made to produce a bill that balances the legitimate administrative concerns of the election administrators and the objectives of this legislation.

Committee Action

The Rules Committee began consideration of S. 874 at its mark-up on May 17, 1989. The Chairman, Senator Wendell H. Ford, submitted an amendment in the nature of a substitute to S. 874.

The amended bill would permit flexibility in the format of the motor-voter applications in order to accommodate administrative and financial concerns expressed by State election officials. States would be permitted to use separate forms for election registration applications and driver's license applications. The measure would also provide assurance that unqualified persons will not be registered, provide for a uniform mail registration application form, and extend agency registration programs to provide more assistance to voters by those agencies most likely to serve persons not reached

by the driver's license process. It would be designed to increase the number of voters on the rolls and to assure that once registered, a voter would remain on the rolls so long as he or she were eligible. It would set standards and procedures for confirming voter lists, but not mandate any particular method of confirming and verifying voter rolls, and attempt to keep the cost of compliance by State officials as low as possible.

After a brief discussion, the Committee agreed to continue consideration of the measure at its next meeting.

Two Members expressed their intention to offer further amendments when the Rules Committee met again on June 8, 1989. At the outset of that meeting, the Chairman's amendment in the nature of a substitute was adopted by the Committee; it then was considered original text for the purpose of offering the additional amendments. Amendments were offered by Senator Stevens and Senator McConnell to the substitute amendment. The meeting of June 8, 1989 adjourned with the understanding that the Committee would reconvene on June 14th, at which time amendments to the substitute amendment would be debated and votes would occur on such amendments, followed by a vote to approve and report the bill as amended by the amendment in the nature of a substitute offered by the Chairman.

Pursuant to the foregoing agreement the Committee met on June 14th to debate and to vote on the proposed amendments to the substitute amendment followed by a vote to approve and report S. 874, as amended.

Senator Stevens offered the following amendments:

To Section 3—providing States flexibility in the motor-voter program by eliminating the requirement that a single application serve as both an application for a driver's license and an application to register to vote. States still must advise driver's license applicants of an opportunity to register, provide a form for those who wish to register and accept completed forms.

To Section 4—one amendment permitting States to continue authentication and notarization requirements of addresses and signatures in mail registration programs; another permitting States to accept only those mail registration applications which are mailed from within a State's borders.

To Section 5—one amendment prohibiting public assistance offices from registering to vote those seeking public benefits; another prohibiting Federal employees from engaging in the traditional State activity of registering voters.

To Section 7—ensuring that one eligibility requirement attested to by an applicant (for both motor-voter and mail applications) be that the applicant is not a permanent resident of another State.

A new Section establishing a program for States to confirm the registration of voters via biennial mailings. As an alternative, an election jurisdiction within a State may elect to participate in the U.S. Postal Service National Change of Address program to obtain change of address data to track and update voter addresses on at least a biennial basis. $20 million would be authorized to be appropriated to support these confirmation programs.

The following five amendments were proposed by Senator McConnell:

A substitute amendment requiring the General Accounting Office to study and report to Congress within one year the cost of having States provide voter registration through the drivers' licensing system, through government agencies, and by mail.

An amendment providing that none of the provisions shall go into effect if the Congressional Budget Office finds that the bill would impose on State and local governments an uncompensated cost of $50 million or more.

An amendment allowing State and local governments, and any agencies enlisted to conduct voter registration, to provide warnings that fraudulent registration, illegal alien voting, and vote fraud and violations of Federal and State laws; warnings may also be included with mailed registration forms.

An amendment to sunset all of the bill's provisions if, after four years after the effective date, there has not been at least a twenty-five percent increase in voter turnout from the level of voter turnout at the time of the effective date.

An amendment to make the bill voluntary unless Congress fully compensates the cost to every State of implementing it.

After debate, the Members who had proposed the aforesaid amendments withdrew them from consideration by the Committee and stated their intention to offer them during Senate consideration of the bill. The roll was then called on the motion to approve and report S. 874 as amended by the Chairman's amendment in the nature of a substitute. That motion was passed by a record vote of 6–3 and the bill, as amended, was ordered reported favorably by the Committee. Senator Stevens requested that the report include minority views. The Chairman assured the Members that the report on this measure would include minority views and the cost estimate of the Congressional Budget Office.

National Voter Registration Procedures for Elections for Federal Office

I. "motor-voter" registration

Two points made in testimony before the Committee are central to the Committee's consideration of this legislation, and to the "motor-voter" provisions in particular. First, voter turnout of registered voters in Presidential elections since 1968 has been quite high. Census Bureau figures indicate a range from a high of 91.2% in 1968 to a low of 86.2% in 1988. While figures from election officials put the totals somewhat lower, at approximately 75%, they are not adjusted for ineligible and duplicate names on the registration rolls. In any case it is clear that most people who are registered to vote do vote, at least in Presidential elections.

Second, between 85% and 90% of people of voting age nationwide have driver's licenses or identification cards issued by motor vehicle offices in our States. A registration system tied to the application for and renewal of a motor vehicle driver's license would appear to be an ideal way to reach and to register most people of voting age throughout the country.

The driver's license procedure appears to be ideally suited to the purpose of registering voters. Applications for a driver's license exist in all States and require most of the information needed to determine the eligibility of a voting registration applicant, and include the additional protection of a photograph. Also, most States already have moved into centralizing record keeping, with their driver's license application as the key document. This provision of the bill affords the States the opportunity to build on that process. It does, however, permit each State some discretion as to whether to have a single application form for use by both agencies or two forms to be completed as part of the application process at the driver's license agency.

Twelve States and the District of Columbia now have some system of registration with the application for a motor vehicle driver's license. Many of the motor-voter programs are part of a larger State agency-based system whereby voter registration applications are available at a State agency, and the agency personnel will accept the completed forms and forward them to the appropriate election official. The type and degree of assistance given or required to complete and process the forms vary a good deal.

States having some form of motor-voter registration program, and a brief description of that program, are as follows:

Alaska.—Although the program was not formalized until 1989. informally Alaska's Department of Motor Vehicles (DMV) has been accepting voter registration applications since 1983. A separate voter registration form is available at the State's DMV offices and must be filled out in front of and witnessed by DMV personnel. DMV will then forward the form to the State Election Office.

Arizona.—The motor-voter program was established in 1982. A separate form is available in each DMV office and is accepted by a deputy registrar associated with the DMV office.

Colorado.—The motor-voter program was first established in 1984. The single application form for both voter registration and driver's license was developed by April 1985.

Iowa.—The motor-voter program was established in 1987. At that time, voters were allowed to register through the State's DMV using a separate form for voter registration. As of 1989, Iowa has developed a single unified form both for registering to vote and applying for a driver's license.

Michigan.—The motor-voter program was established in 1975. Voter registration requires completion of a separate form. DMV employees are trained to assist in voter registration and accept changes of address for purposes of voter registration.

Minnesota.—The motor-voter program was established in 1987. While a separate form is required for voter registration, that form and the driver's license application are joined together. DMV personnel need only separate the two forms at a perforated line before sending the voter registration form to the appropriate voter registrar.

Nevada.—The motor-voter program was established in 1987. Persons desiring to register to vote must complete a separate form from that required to apply for a driver's license. DMV personnel will accept the voter registration applications and forward it to the appropriate county registrar.

North Carolina.—The motor-voter program was established in 1983. Persons desiring to register to vote must complete a separate form. DMV personnel will accept the voter registration application and forward it to the State Board of Elections, which will then forward it to the appropriate county registrar.

Ohio.—The motor-voter program was established in 1977. Persons desiring to register to vote must complete a separate form. DMV personnel will accept the voter registration application and forward it to the appropriate county registrar.

Oregon.—The State legislature just passed motor-voter provisions into law in 1989. At the present time it is not clear how the program will be administered.

Vermont.—The motor-voter program was established in 1986. Persons desiring to register to vote must complete a separate form from that required to apply for a driver's license. DMV personnel will then administer an oath to the registrant, accept the voter registration application and forward it to the appropriate county registrar.

Washington.—The motor-voter program was established in 1984. Persons desiring to register to vote must complete a separate form. DMV personnel will accept the voter registration application and forward it to the appropriate county registrar.

District of Columbia.—The motor-voter program was established in 1989. A single combined form is used to both register voters and apply for a driver's license. The section of the form containing information required for both processes has a carbon attached; that part of the form containing only information required by the Department of Elections has no carbon.

It has recently been reported that in the first month of operation of the motor-voter registration program in the District of Columbia, which includes motor vehicle registration as well as driver's license applications, voter registrations were four times the usual monthly rate, and that increase was achieved with one-half of the license and motor vehicle registration applicants declining to register to vote.

II. UNIFORM MAIL REGISTRATION

Texas was the first State to institute a system of registration by mail—the person desiring to register mailed a card containing all pertinent information to a voter registrar.[1] Now, more than half the States and the District of Columbia have some form of mail registration program. Mail registration has been a means for increasing the voter rolls: it relieves the voter of the need to appear in person at one central registration office during prescribed hours, and it permits organizations to go to the voter with organized registration drives. It is convenient for the voter, for registration drive organizers and for voter registrars as well.

Some have expressed concern that mail registration increases the potential for fraud. This concern was expressed by the Department of Justice in its letter to the Chairman of the Committee with

[1] The procedure adopted by Texas was limited to military personnel. The first State to adopt such a procedure universally was Alaska.

regard to the original bill.[2] The letter states, "Although the Department's experience to date with voting fraud cases has not shown that registration by mail has a substantial impact on the incidence of voting fraud, the reason for this is that most of the states which already have registration by mail also have procedures for independently confirming the information provided in voter registration applications."

It is significant to note that the States with a mail registration procedure include the most populous ones of California and New York, as well as other States having significant population, including Texas, Ohio, New Jersey and Pennsylvania. Less than half of those States that have mail registration require a witness to the applicant's signature and, of the more populous States mentioned earlier, only New Jersey requires a witness. The most commonly used methods of confirming information on mail registration applications are a non-forwardable or forwardable mailing to the applicant after receipt of the application, and warnings of penalties for fraud on the application form. This bill would provide for both of these methods of confirming registration information. It requires a notice to each applicant as to the disposition of his or her application. Also, this bill would require that mail applications include a statement of voting qualifications and an attestation, which must be signed by the applicant under penalty of perjury, that the applicant meets all those requirements. In addition, all applicants must be informed of the penalties provided by law for submission of a false voter registration application and in the case of mail applications such notice would be on the form itself.

A study by the Congressional Research Service of States having mail registration procedures in 1984, found that "Voter registration officials in all eighteen States for which data are available reported they have has little or no fraud with post card registration. Several said they have had no more fraud with post card registration than with in-person registration.

III. AGENCY REGISTRATION

Many persons will visit a public office or facility—a public assistance office, an unemployment office, a tax office, a library—in the course of a year. Public agency voter registration provides a method whereby citizens may easily register to vote and fulfills the requirement that government should do all it can to make registration widely and easily available. Public agency voter registration means that registration services—forms and assistance in completing such forms—will be available routinely and year round in many government offices. The experience in many States with registration at schools, at libraries, or in motor vehicle offices provided the precedents for agency voter registration programs. As of 1988, 15 States (Alaska, Georgia, Illinois, Idaho, Iowa, Maryland, Michigan, Minnesota, Montana, New York, Ohio, Oklahoma, Virginia, Washington, and West Virginia) had, either through executive

[2] The letter dated June 7, 1989 to the Chairman and signed by Carol T. Crawford, Assistant Attorney General, Office of Legislative Affairs, U.S. Department of Justice, presents the views of that office with regard to the original version of S. 874, not to the substitute amendment reported here, therefore it is not set forth in full in this report.

order or law, established some form of public agency voter registration system other than motor-voter registration procedures, often as adjunct to other voter registration procedures.

An agency registration program may also include private offices and locations throughout a State. An agency program that includes private places at which persons may register to vote may be organized through cooperative arrangements and agreements between the sponsoring agency and appropriate local or State election officials. A comprehensive agency-based program should include private locations and offices, as well as public agencies, in order to make registration available on as broad a basis as possible in a State and to make registration readily available in areas that experience low registration.

A recent Department of Transportation study notes that almost 50 percent of those persons who do not have a driver's license have annual incomes of less than $10,000. As a result, motor-voter registration programs may not adequately reach low income citizens and minorities. Active public and private agency-based voter registration programs available through such public agencies as State public assistance offices, State unemployment offices, or State vocational rehabilitation offices, as well as at private offices and locations in areas of low registration, are more likely to reach these eligible citizens, who are likely to have contact with a number of these agencies. Currently, most registration systems make it difficult for the low income citizen to qualify to participate in our Nation's elections. Agency voter registration programs provide an institutional solution to the problem of unequal access to the voting booth.

Agency-based registration on a year-round basis may also indirectly minimize the necessity for periodic, large scale purges of their voter registration lists by election registrars. With an effective agency-based registration system, voters would have the opportunity not only to register, but also to update their registrations each time they sought services at the government agency. Persons who receive social services—welfare, unemployment checks—must keep their addresses up-to-date in order to receive the benefit. Public housing recipients similarly must keep their address information up-to-date.

In a recent study conducted by the National Center for Policy Alternatives, it was noted that in New York 10,000 persons were registered through public agencies in only two weeks, while in Ohio 70,000 persons were registered in six weeks. Margaret Rosenfield, Director of Elections Programs for Ohio, had the following observation about the Ohio system:

> Agency-based registration is cost effective, but it is not cost free. We've found no way to increase registration without increased cost. There must be a registration form for every new voter. Processing those forms takes time and staff, regardless of whether the registration is accomplished in person, by mail, by a volunteer registrar, or at a state agency. But agency-based registration can pay for itself by doubling service without doubling cost.

> The primary cost of agency-based registration is printing. A state must have enough copies of its voter registration forms to make them available in sufficient quantities to all agencies.

Agency-based voter registration provides a useful supplement to motor-voter registration systems, enables more low income and minority citizens to get registered, and is cost effective.

IV. VOTING LIST CONFIRMATION PROCEDURES AND STANDARDS

If there was a single point of agreement among all participants in the hearings on voter registration, it was the fact that not only is voting a right, but also, in this country, everyone has an equal right to choose not to vote. However, many States continue to penalize such non-voters by removing their names from the voter registration rolls merely because they have failed to cast a ballot in a recent election. Such citizens may not have moved or died or committed a felony. Their only "crime" was not to have voted in a recent election. As the Reverend Jesse Jackson stated during the House hearings on voter registration reform:

> No other rights guaranteed to citizens are bound by the constant exercise of that right. We do not lose our right to free speech because we do not speak out on every issue.

While most States use the procedure of removal for non-voting merely as an inexpensive method for eliminating persons believed to have moved or died, evidence suggests that many persons may be removed from the election rolls merely for exercising their right not to vote, a practice which tends to disproportionately affect persons of low incomes, and blacks and other minorities.

Such purging for non-voting tends to be highly inefficient and costly. It not only requires eligible citizens to re-register when they have chosen not to exercise their vote, but it also unnecessarily places additional burdens on the registration system because persons who are legitimately registered must be processed all over again. For example, reports from recent efforts to register voters in the State of New York indicated that almost 300,000 persons were added to the registration rolls. However, at the same time that they were registering 300,000 new voters, the registrars purged over 300,000 persons. It was estimated by New York officials that 250,000 of these persons were purged from the rolls for merely choosing not to vote.

Another point that was raised in the hearings on voter registration reform related to the discriminatory nature of periodic voter purges, which appear to affect blacks and minorities more than others. For example, according to Dr. Allan J. Lichtman, a noted scholar in the field of electoral analysis, a registered voter in a predominantly minority election district has a 35 percent greater chance of being purged than a registered voter in a predominantly white district. While State and local governments definitely have legitimate needs to keep registration rolls up-to-date and eliminate the names of ineligible persons, procedures for performing this function must be done in a fair and non-discriminatory fashion.

Currently, almost all States have some method of mail notification to persons who have been or will be removed from voter registration lists. However, in cases where errors in removing legitimate voters from the lists occur or where citizens have moved to a nearby jurisdiction—unaware that they need to notify their local registrar—such notification often comes too late for legitimate voters and citizens to act to correct the error or to re-register. In many States registration closes 30 days before a general election. If the notification fails to reach a citizen in time, he or she will be unable to re-register for the election. It follows that removal of names from registration lists should be timed so that individuals will have an opportunity to appeal or re-register before the next election, or that removal be permitted only when a voter has moved to an address outside the jurisdiction of the registrar.

V. ENFORCEMENT AND REGULATION

a. The Federal Election Commission

The Federal Election Commission (FEC) was created to oversee the campaign finance law authorized under the Federal Election Campaign Act and its amendments. The FEC officially became operative in 1975. Although known mostly for its regulatory activities in the area of Federal election campaign finance, the FEC is the only Federal agency uniquely set up to deal with Federal elections. Due to the politically sensitive nature of its role, the FEC was organized as an independent agency with members appointed with consideration of their political affiliations, but under restrictions designed to assure that no single political party would control its deliberations. Further, through its National Clearinghouse on Election Administration, the FEC has maintained an advisory role in election administration and has developed model election administration programs and information to assist States in conducting their elections. Given its composition and independent status, its experience in developing rules and regulations in the area of campaign finance, its unique position within the Federal government as the principle agency dealing with election administration, and its experience in developing model procedures for States, the Federal regulation of any national voter registration could best be administered from the FEC.

b. Enforcement

Many State and local election administrators expressed concern about the potential for an increase in voter fraud as a possible result of voter registration reform, and especially that registration by mail would make it easier for persons to vote fraudulently. Based on the Congressional Research Service's study, however, the experience of the States with mail registration appears to be that voter fraud is no more prevalent under a mail registration system than under other types of voter registration systems. Nevertheless, a uniform national voter registration system should make it a Federal offense to fraudulently register to vote. Voter fraud is a crime against the legitimate electoral process.

On the other hand, others expressed concern that legitimate voters should be able to go to the polls without fear of intimidation

or threat by either officials or other citizens. As much as it is a crime to attempt to fraudulently cast a ballot, it is equally a crime to try to prevent an eligible citizen from casting a ballot in an election. Any national voter registration measure should discourage equally both of these activities.

In addition to criminal enforcement, an effective national voter registration program must also include private civil enforcement. Such private initiative can encourage action to assure that a reasonable effort is undertaken to achieve its objectives in all States and, indeed, it may be essential to the success of such a program in some areas. Private civil enforcement should be designed to assure and to encourage, to the fullest extent possible, the cooperation of local and State election officials responsible for implementation of the voter registration programs. An essential element of an effective civil enforcement program is a requirement for notice of any complaint regarding its implementation to the appropriate election officials together with a process for its administrative resolution before legal action may be commenced.

SECTION-BY-SECTION. DESCRIPTION AND DISCUSSION COMMITTEE SUBSTITUTE AMENDMENT TO S. 874, NATIONAL VOTER REGISTRATION ACT OF 1989

To establish national voter registration procedures for Presidential and Congressional elections, and for other purposes.

Section 1. Short Title

This Act may be cited as the "National Voter Registration Act of 1989".

Section 2. National Procedures for Voter Registration for Elections for Federal Office

Section 2 requires that the States, in addition to any other method for voter registration provided for under State law, establish procedures to permit voter registration: simultaneously with an application for a driver's license; by mail application; by application in person, either at an appropriate registration office, or at a Federal, State or private sector location. The Act would not apply to States with no voter registration requirement for elections for Federal office.

"MOTOR-VOTER REGISTRATION"

Section 3. Simultaneous Application for Voter Registration and Application for Motor Vehicle Driver's License

Subsections (a) and (b) required that, in each State that requires registration for Federal elections, unless an applicant declines in writing to apply to register to vote, an application for or the renewal of a driver's license shall serve as an application for Federal voter registration or an update of a prior registration. Subsequent subsections provide that where it serves as an update of a prior registration and indicates a new address that is within the jurisdiction of the same voting registrar as was the former address, that registrar shall correct the address accordingly. Where such applica-

tion indicates a change of address to one outside the jurisdiction of the registrar for the former address, such update shall be considered a new registration at the new address and the voter's consent to removal of his or her name from voting rolls for the former address.

The requirement that the application form or forms provide some means, such as a check-off box, for a person to decline to register to vote has a two-fold purpose: one, to prevent unnecessary paperwork, and two, to prevent the registration of ineligible persons.

It is clearly not the intention of this bill to generate needless paperwork for either the registry of motor vehicles or the voting registrar. The Committee would expect the registry of motor vehicles staff to instruct all applicants who are already properly registered to vote to decline to re-register. Such instructions should also be included in any written materials provided applicants as well as in any instructions posted in motor vehicles agency offices.

The Committee would expect also that any driver's license applicant who does not meet the requirements to register to vote would decline to do so. It is important that each applicant be advised of the voting requirements and the need to decline to register if he or she does not meet any of those requirements. The applicant should also be advised that there is no obligation to specify the particular reason for choosing to decline to register to vote. Some have noted that the requirements to obtain a driver's license, especially age and citizenship, are not the same as those for voting, and that many who are ineligible to vote may complete applications to register to vote. It is clearly in the interest of the motor vehicle agency personnel to minimize their workload, and that of the voting registrar as well, by instructing those applicants who are under age to decline to register, and it is expected that they will do so. The bill also provides that all registration requirements must be set forth in the application to register so that they will be readily available for each applicant to review during the application process.

Since some of the reasons for declining to register to vote may involve matters of personal privacy, such as ineligibility under State law due to incompetence or a criminal conviction, an individual who declines to register to vote shall not be questioned as to the reasons for such action. If an individual reveals information relating to such declination, it must be treated in a confidential manner and may not be used for any purpose other than voter registration.

Subsection (c) provides that each State shall include a voter registration application form as part of a driver's license application. The voter registration application form submitted with the driver's license application: shall not require information which duplicates the license application form, except a second signature, and such information as shall be required to prevent duplicate registration, to make an assessment of eligibility and to administer voter registration and other parts of the election process; shall include a means, such as a check-off box, to permit an applicant to decline to register; and shall include a statement that specifies each eligibility requirement (including citizenship), contain an attestation clause that the applicant meets each requirement, and require the

signature of the applicant under penalty of perjury. Such voter registration form shall be made available to the appropriate State or local election official as provided by State law.

With respect to the voter registration part of the application, it is the intent of the Committee that the applicant's mailing address be included on the form if it differs from the applicant's residence. Furthermore, the Committee intends that in those jurisdictions covered by Section 203 of the Voting Rights Act, the application be in English and available in the languages authorized for that jurisdiction by Section 203 of the Voting Rights Act.

Although the Committee would encourage the States to adopt a single application form for voter registration and a motor vehicle driver's license in order to expedite the process, minimize the duplication of information, and to establish a simultaneous application process, it recognizes that adminstrative and funding considerations may pose serious problems for some States. It is the intent of the Committee in this regard that a State may, in its discretion, devise an application consisting of two forms, one for the license application and the other for voter registration, thereby avoiding any cost associated with revamping current procedures or computer programs where computer scanners are used.

Compliance with this section would be achieved where the process of applying for a driver's license includes the receipt and processing of a voter registration application form unless the applicant indicates, by checking off a box or by some other means, that he or she declines to register to vote. In the event that the applicant fails to decline to register and also fails to complete the voter registration application form, such voter registration form need not be processed for voter registration purposes.

With regard to the requirement that the voter registration application form be made available by the driver's license agency to the "appropriate State election official as provided by State law", it is intended that such forms be sent to the appropriate election official for the applicant's address in accordance with the regulations and laws of each State. It is not the Committee's intent that such forms be sent to the chief election official of each State designated under this Act unless State law so requires.

The Committee is aware that the qualifications for a driver's license differ from those for voting in most States and that some people who are qualified for a driver's license are not qualified to vote by reason of age, citizenship, length of residency, or other reasons. Therefore, it has included a requirement that the voting registration application form used in the motor-voter procedure include a clause setting forth the requirements for voting and that each applicant be required to sign, under penalty of perjury, attesting that he or she meets those requirements. In the event an applicant does not fulfill any one of those requirements, such applicant should be instructed to decline to register and should not be required to explain or specify which requirement he or she fails to meet. If any information is offered with regard to that matter, it should be confidential and may not be used for any other purpose.

Subsection (d) requires that a driver's license change of address notice shall, if the driver so indicates, serve as a voter registration change of address. The requirements of residency pertaining to

drivers licenses may vary from those pertaining to voting; therefore, this provision will permit a person to indicate that a change of address notification to the driver's license agency is not intended to effect a change in his or her address for voting purposes, and should not be forwarded to the voter registrar.

"MAIL REGISTRATION"

Section 4. Mail Registration

Subsection (a) requires that all States that require registration for elections for Federal office use and accept the mail voter registration application form prescribed by the Federal Election Commission for registration of voters for Federal office. The form may also be used for voter registration change of address.

The Federal Election Commission is required pursuant to Section 7 to promulgate a mail registration application form that includes a statement that specifies each eligibility requirement for voting, contains an attestation that the applicant meets each such requirement, including citizenship, and requires the signature of the applicant, under penalty of perjury. The form may not include any requirement for notarization or other formal authentication.

It is the intent of the Committee that the applicant's mailing address be included on the mail voter registration application form if it differs from the applicant's residence. Furthermore, the Committee intends that in those jurisdictions covered by Section 203 of the Voting Rights Act, the application be in English and available in the languages authorized for that jurisdiction by Section 203 of the Voting Rights Act.

The requirement that States use a uniform mail registration application form serves to augment the extensive outreach features of the "motor-voter" and agency registration procedures. Uniform mail forms will permit voter registration drives through regional or national mailing, or for more than one State at a central location, such as a city where persons from a number of neighboring States work, shop or attend events.

States that use mail registration application procedures generally employ a number of means to prevent fraud, such as including on the form a statement of voter qualification requirements or penalties for fraud, or a follow-up mailing. The Federal Election Commission is required to include, in the uniform application form it is directed to promulgate, a statement of the qualifications to vote and an attestation to be signed under penalty of perjury that the applicant meets those requirements. Another provision requires that each applicant be notified of the disposition of his or her application. States are permitted, of course, to employ any cther fraud protection procedure not inconsistent with this bill.

Subsection (b) requires that the chief State election officer make the mail application forms available for government and private distribution, with emphasis on availability for organized voter registration programs. Broad dissemination of application forms, when coupled with the other procedures of this bill, should reach most persons eligible to register to vote, and is, therefore, a key element of this legislation's voter outreach feature. Such forms may also be disseminated to agencies designated under the agency-based regis-

tration procedures for use by those agencies in their registration programs.

"AGENCY REGISTRATION"

Section 5. Voter Registration Locations

Subsection (a) requires all States that require registration for elections for Federal office to designate appropriate State, Federal and private sector locations to distribute, to assist with completion, and to process mail voter registration application forms. All State offices providing public assistance, unemployment compensation, vocational rehabilitation, and related services shall be included in the designated locations, and, unless the applicant declines in writing to register to vote, shall distribute the prescribed, or forms substantially equivalent to, mail voter registration application forms with their own agency's applications, provide the same assistance with preparation of the registration form as is provided for completion of their own forms, and accept completed forms for transmittal to the appropriate State election official. The Committee believes that, whenever feasible, assistance with voter registration forms should be provided by someone other than the person providing benefits assistance.

As noted earlier with reference to the moto-voter provisions of this bill, the term "appropriate State election official" shall be interpreted in accordance with State law or practice, and is not limited to the chief election official designated under this bill. Forms shall also be made available, assistance provided and applications processed at designated public libraries, public schools, offices of city and county clerks, fishing and hunting license bureaus, and government revenue offices. Those persons providing assistance to applicants shall do so with seeking to influence party registration or political preference.

It is the intent of the Committee that its agency-based registration procedure supplement the motor-voter registration in each State and that locations where individuals might register to vote be widespread and easily accessible. Eligible students 18 years and older in public high schools and publicly supported colleges and universities should be given opportunities to register. Certain agencies, such as those providing social welfare services, unemployment compensation, vocational rehabilitation, and related services, are likely to serve those persons of voting age who may not have drivers licenses and therefore would not benefit from the motor-voter program. Among those agencies providing "related services" are public housing agencies, job training agencies, legal services, and outpatient health clinics. It is not intended, however, that receipt of the services of such agencies be in any way contingent upon the individual's registering to vote.

The States are also authorized and required to designate other agencies to participate in their agency-based program, but those agencies are not required to provide the special assistance to applicants required of the agencies specified in the previous paragraphs. Those agencies are included for the purpose of making the registration process available to as many people as is feasible.

Subsection (b) requires all entities of the Federal Government to cooperate as much as practicable with the States in carrying out this program by participating as designated voter registration agencies. Such participation requirement is subject to the Federal agency agreeing to participate pursuant to subsection (a) of this Section. No specific Federal agencies are designated in this bill to participate, it being left to the States to netgotiate such arrangements with appropriate Federal agencies.

Subsection (c) requires the agencies to transmit the registration applications to the voter registrar within 10 days of receipt; or within 5 days of receipt, if received within 5 days of registration cutoff date. The form, as noted above, may also be used for voter registration change of address. The applicant may, of course, mail the voter registration application directly to the appropriate State election official rather than returning it to the agency for transmittal.

Section 6. Requirements With Respect to Administration of Voter Registration

Subsection (a) provides that any person registered 30 days, or a lesser period as provided by State law, before a Federal election shall be allowed to vote. For these purposes, registration is complete upon submitting the form to the voting registrar, motor vehicle office, designated agency or office, or on date of postmark, if mailed.

This subsection also requires that State election officials notify each applicant of the disposition of his or her registration application. The means of notifying each applicant is not specified, so that each State may continue to use whatever means is required or permitted by State law or regulation. Most States having such a requirement send such notices by non-forwardable mail; one permits forwardable mailing. States may adopt whichever procedure they deem best suited to provide notice to the applicant and to provide the registrar with verification of the accuracy of the information provided by the applicant. The Committee recognizes that such notices are used by most States as a means of detecting the possibility of fraud in voting registration and intends to give each State discretion to adopt a means of notification best suited to accomplish that purpose. The Committee believes that accurate and current voter registration lists are essential to the integrity of the election process and for the protection of the individual.

It also permits removal of a voter's name from the voter rolls only (1) at the request of the voter; (2) upon the death of the voter; or (3) as provided by State law for criminal conviction, mental incapacity, or change in residence.

Applicants must be informed of eligibility requirements and penalties for submitting a false voter registration application. The eligibility requirements are required to be set forth in all voter registration application forms under this bill. A statement of penalties for submission of a false voter registration application must also be included in such forms.

This subsection also provides that forms used by agencies should include a question as to whether or not the applicant wishes to reg-

ister to vote, and applicants should be provided an application if they desire to register.

Subsection (b) requires that any State program to confirm the voter registration roll must be uniform and non-discriminatory, and may not cause the removal of the name of any person for non-voting. It is the Committee's intent that in those jurisdictions covered by Section 203 of the Voting Rights Act, any notices or communications be in English and available in the language authorized for that jurisdiction by Section 203 of the Voting Rights Act.

The purpose of this requirement is to prohibit selective or discriminatory purge programs. This requirement may not be avoided by a registrar conducting a purge program or activity based on lists provided by other parties where such lists were compiled as the result of a selective, non-uniform, or discriminatory program or activity. By the term "non-discriminatory" it is intended to include in the meaning that the procedure shall not disproportionately remove minority or disabled voters from the official list of registered voters.

It is the intent of this section to impose the uniform and non-discriminatory standards on any activity that is used to start, or has the effect of starting, a purge of the voter rolls, without regard to how it is described or to whether it also may have some other purpose. For example, the mailing of sample ballots is clearly a program that has another purpose but might provide the basis for a purge of voter rolls. If it is to be used for that purpose and the registrar uses it to serve as his or her reason to send notices under subsection (d), that sample ballot mailing program must meet the standards of this section.

The "determination" referred to in subsection (d) which serves as the basis for a registrar sending a notice to a registered voter must be based on some reason to believe such voter is no longer at the registered address; it may not be arbitrary. Also, it may not be based on information derived from selective, non-uniform or discriminatory practices, mailings, programs or activities of the registrar or some other person providing information to the registrar.

While the bill does not mandate a specific procedure to assure an accurate and current voter roll, the Committee is mindful of the need to keep the voter rolls accurate and updated on a regular basis. The Committee is concerned, however, that programs may be abused and may result in the elimination of names of voters from the rolls due solely to their failure to respond to a mailing. Abuses may be found in the design of a program as well as in its implementation. Although the bill does not impose a Federal program and permits the States to continue to use their programs, it is not the intent of this bill to sanction frequent or repetitive purge programs. Such practices may raise a question of discrimination or uniformity. The Committee expects the Federal Election Commission to obtain information on a regular basis regarding such programs and their implementation and to include in its reports to Congress information regarding such programs and practices, and the possibility of abuses.

Subsection (c) prohibits any systematic procedure to confirm voting lists within 60 days of a Federal election. It is important to note here that such activity or program may not *take place* during

the sixty day period preceding a Federal election. No names may be removed from an official voter registration list pursuant to such a systematic program during that period. Federal elections include primaries and run-off elections for Federal office as well as general elections.

Subsection (d) prohibits any State from removing a name from its Federal registration rolls due to a possible change of address unless the voter confirms in writing that he or she has moved out of the voting jurisdiction, or notice is mailed by forwardable mail with postage paid card for address correction notifying voter to return same within 30 days and the voter fails to return the card or appear at a polling place to vote and, if the address has in fact changed, to correct his or her address during the period between the date of the notice and the day following the next Presidential election.

This subsection must be read together with the requirements of subsection (a) that a voter's name may be removed only for specific reasons. The procedure set forth in subsection (d) for removal of a name from the voting rolls may not be used where there is no reason to believe that such person is no longer eligible, for reasons such as change of address, death, incompetence or criminal conviction. Also, the name of a person who has in fact not changed his or her address may not be removed for failure to respond to a mailing where such person appears to vote as herein provided and it is not necessary for such person to correct his or her address since it has not changed.

If a registrant has not returned the postcard and has moved to another address within the same registrar's jurisdiction, "confirmation" of such registrant's correct address may be required before such registrant is permitted to vote in a Federal election. The Committee intends that written attestation, or signed statement, of the registrant's address will be sufficient confirmation.

Although this provision requires that a person who fails to respond to such a notice and has moved to another address within the jurisdiction of the same registrar must be permitted to vote in any election through and including the next Presidential election following the notice, it is silent as to where such vote should be cast. Whether it should be the polling place assigned for the former address or that for the present address is left to State law and regulation. The Committee intends that the standards set in this bill for list verification programs—that is, that they be uniform and non-discriminatory—would apply here as well. It is expected, therefore, that the States will exervise this discretion in determining the appropriate polling place in a uniform and non-discriminatory manner. Some have expressed concern that there could be abuses in this process that may have the effect of discouraging some persons from voting. The Federal Election Commission is direted to review any complaint of abuses in this area and include information regarding abuses in its report to Congress following each Federal general election.

It is not the intent of this provision to pre-empt any State requirement that a person whose eligibility to vote is challenged may be required to vote a special ballot that is subject to post election rejection, where the challenge is sustained.

This subsection also provides that a voter who has moved to another jurisdiction must register to vote within the new jurisdiction to be eligible to vote. Such voter may no longer vote in the jurisdiction from which he or she has moved.

Subsection (e) provides that if a voter changes his or her voting address to another within the same voting jurisdiction, the registrar shall correct the voting list and the voter's name may not be removed. The obligation of the registrar to change the rolls to reflect the new address is triggered by notice to the registrar of such change, not the date of such change. The intent of this requirement is that it is the responsibility of a registrar, upon notification of a change of address by a voter to another address within the registrar's jurisdiction, to make the necessary correction of the records. A registrar may not impose requirements, such as re-registration, upon such a voter. Although such notice of change of address might be made by the voter through use of the motor-voter process, the registrar's responsibility to make the correction is not dependent on the voter giving such notice; such notice may come through the postal service change of address program or other independent information, subject to verification by the voter.

Section 7. Federal Coordination and Regulations

Section 7 provides that the Federal Election Commission shall (1) coordinate Federal functions under this Act; (2) prescribe regulations to carry out its provisions; (3) prescribe a uniform mail registration application form without notarization; (4) report to Congress on the impact of the Act in June following each Federal election; and (5) inform the States with respect to their responsibilities under the Act.

As noted elsewhere in this report, the Federal Election Commission shall include in its report to Congress information regarding any reported or known abuses in the design and implementation by the States of their programs or activities to assure accurate and current voter registration rolls for elections for Federal office and any reported or known abuses in State rules or regulations and their implementation regarding the selection of the polling place at which a person may vote pursuant to subsection (d) of Section 6.

Section 8. Designation of Chief State Election Official

Section 8 requires that each State designate a chief State election official to coordinate State functions under the Act.

Section 9. Civil Enforcement and Private Right of Action

Subsection (a) authorizes the Attorney General to bring a civil action for declaratory or injunctive relief.

Subsection (b) permits an individual to bring a civil action if a violation of this Act is not corrected by the State official within 90 days of notice; or with 20 days' notice if the violation occurs within 120 days of the Federal election; or without advance notice if the violation occurs within 30 days of an election and a copy of the compliant is provided to the chief election officer of the State within 24 hours after it is filed. In determining the applicable notice requirement, a continuing violation may be dated from its most recent occurrence. The intention here is to provide the State with an opportunity to remedy the violation where possible, and to

give the courts adequate time to award declaratory and injunctive relief during the crucial period immediately preceding an election. The individual aggrieved may bring suit after the required time has elapsed, unless the State has provided the complete remedy requested in the notice.

Subsection (c) authorizes, at the court's discretion, attorney fees and costs to the prevailing party.

Subsection (d) provides that the remedies under this section are in addition to any other remedies.

Section 10. Enforcement

Section 10 would make a Federal offense in a Federal election, the knowing and willful (1) intimidation, threat or coercion with regard to registration or voting; (2) procurement or submission of false registrations, or procurement, casting, or tabulation of false, fictitious or fraudulent ballots.

Concern has been expressed that these criminal provisions may be used to impede lawful political activities, such as distributing campaign literature, poll watching, and registration drives. This provison refers to acts committee "knowingly and willfully" and does not refer to inadvertent omissions or inaccuracies on voter registration forms or absentee ballots.

Section 11. Findings and Purposes

Subsection (a) sets forth the findings of Congress that to vote is a fundamental right which government should promote, and that discriminatory and unfair registration laws and procedures can affect voter participation.

Subsection (b) establishes the purposes of this Act, which are to increase registration of voters, enhance participation, protect the integrity of the political process, and assure accurate voter rolls.

Section 12. Definitions

Section 12 defines the term "motor vehicle driver's license" to include a motor vehicle I.D. card, and it applies the definitions given in section 301 of the Federal Election Campaign Act of 1971 to election terms used in this Act.

Section 13. Effective Date

Section 13 makes the Act effective January 1, 1993.

Cost Estimate

In compliance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the estimate of costs of this measure prepared by the Congressional Budget Office pursuant to section 403 of the Congressional Budget Act, is as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 19, 1989.

Hon. WENDELL H. FORD,
Chairman, Committee on Rules and Administration,
U.S. Senate, Washington, DC.

DEAR MR. CHARIMAN: The Congressional Budget Office has prepared the attached cost estimate for S. 874, the National Voter Registration Act of 1989.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ROBERT D. REISCHAUER,
Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 874.
2. Bill title: National Voter Registration Act of 1989.
3. Bill status: As ordered reported by the Senate Committee on Rules and Administration, June 14, 1989.
4. Bill purpose: S. 874 would create a national system of voter registration procedures for elections for federal office. Responsibility for implementing the system would fall largely to the states, with the federal government responsible for enforcement, as well as financial and technical assistance.

Requirements for States

Under the national system of voter registration, each state (except North Dakota, which has no registration requirement) would be required to provide the following methods of registration:

Motor/Voter.—An application for a driver's license (new, renewal, or change of address) submitted to the state motor vehicle authority would also serve as an application for voter registration. An individual would have to decline in writing on the application form to avoid registering by this means.

Mail Registration.—Each state would make available through various sources a form, prescribed by the Federal Election Commission, that applicants could complete and mail to the election official to register for federal elections.

Agency Registration.—Each state would have to designate some state and federal offices as well as private sector locations (such as public libraries, unemployment offices, banks, fishing and hunting license bureaus, or post offices) to distribute and collect applications for voter registration. Such locations would then forward the applications to the appropriate election official.

Currently, the federal government has little involvement with voter registration. Each state has its own laws governing registration, and in practice, registration practices vary widely even among local election jurisdictions within a state. S. 874 would mandate that states provide the specified registration methods consistently in all jurisdictions.

In addition, S. 874 would mandate that any state programs used to update voter registration lists shall be uniform and nondiscriminatory and may not remove someone from the list for not voting. The bill would permit a state, if it determines a voter has moved, to remove the voter from the list only after sending a forwardable notice with a return card that would allow the voter to confirm the correct address.

Finally, each state would have to designate a chief state official responsible for implementing the state's functions under S. 874.

Requirements for the Federal Government

S. 874 would require the Federal Election Commission (FEC) to provide information to the states regarding their responsibilities and to report to the Congress once every two years on the impact of the registration procedures required by the bill. The FEC also would have to develop a uniform application form to be used by states for mail registration.

In addition, S. 874 would authorize the Attorney General to bring civil actions in court to enforce the provisions of the bill. Individuals also would be allowed to ask the court for relief from any violations of the bill's provisions.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1990	1991	1992	1993	1994
Federal Election Commission:					
Estimated authorization level		0.2	0.2	0.2	0.2
Estimated outlays		.2	.2	.2	.2

The costs of this bill fall within function 800.

Basis of Estimate

Based on information from the FEC, CBO estimates that the additional staff and associated expenses necessary to develop a mail registration form and to provide assistance to the states would cost approximately $200,000 annually, beginning in 1991. The requirements imposed on states and localities would become effective beginning January 1, 1993.

6. Estimated cost to State and local governments: S. 874 would require states to provide three types of voter registration for federal elections beginning in 1993: motor/voter, mail-in, and agency registration. The bill also would mandate that states use a uniform and nondiscriminatory program for maintaining accurate lists of eligible voters.

Consistent with CBO's usual procedures for estimating the cost effects of legislation, this estimate compares the cost to states of complying with the bill's provisions to the cost of their current practices under existing law. Few state and local governments currently employ all the methods required by the bill for registering and maintaining voters on the rolls. In addition, without S. 874, states and localities are unlikely to replace their existing practices with those outlined in the bill. Therefore, the costs states would

incur in changing their procedures would be directly attributable to enactment of the bill.

Summary of Costs

Direct Costs.—If the bill is enacted, state and local governments would have to pay for the cost of complying with the bill's registration provisions. For the additional staff, postage, and printing expenses associated with the expected increase in registrations, especially through motor/voter, CBO estimates that it would cost states and localities an average of $20 million to $25 million a year for the first five years of the program. Added costs would be somewhat lower than the average in federal election years, and above the average in other years, since the procedures required by the bill would have the effect of smoothing the current election-year peaks in registration costs. Some of these expenses would begin in 1992, the year before the bill's provisions take effect, as the states prepare to offer the new registration methods.

Although the bill would not directly require it, some states may decide to acquire, expand, or upgrade computer systems to facilitate implementation of the bill. To the extent that state and local governments make such changes in computer technology, their costs could increase further. For example, we expect that one-time costs could amount to $60 million to $70 million to computerize the registration lists of all the jurisdictions that currently do not have computers. We cannot predict how many jurisdictions would do so, or how many that now have computers would choose to change their system.

Other Costs.—To the extent that S. 874 is successful in increasing the number of registered voters in all jurisdictions, state and local governments likely would face other costs that are not directly associated with implementing the bill's provisions. For example, if more people are registered, then presumably voter turnout during elections would increase. Because election officials try to maintain a certain ratio of voters per polling place, officials might have to add new polling places, voting machines, and poll workers. However, these officials would take the same steps because of growth or migration patterns, and it would be difficult to separate the bill's effect on increased turnout from other contributing factors.

Certain states with specialized election laws would encounter some secondary effects of the bill. California law, for example, requires state and local officials to mail all voters on the registration list a sample ballot and an explanation of all ballot initiative issues before each election. If enactment of S. 874 results in more people registered in California and other states, then the cost of such special mailings will be greater. On the other hand, the bill's provisions that encourage improved list-cleaning would result in more accurate voter registration lists, and election officials would save money by not having to mail voting materials to people who no longer would be on the lists. We cannot estimate the costs or savings from such effects in the various states.

Because S. 874 would allow individuals to sue for relief from violation of the bill's provisions, state and local governments and officials are potentially liable to pay fines and court and attorney fees

if they lose a lawsuit. Such costs would not result directly from the bill, but rather from court cases that CBO cannot predict.

Current Law

Under current law, each state sets its own rules or guidelines for registering to vote in federal elections, and many states allow a wide range in practice among decentralized, local election jurisdictions (usually counties or cities and towns). Just over half the states already have mail-in registration, and about one-fourth of the states have some form of motor/voter registration. States and local jurisdictions pay the costs of registering voters, and the federal government does not currently assist them with these costs.

Data Collection

Because voting registration practices vary so widely, the incremental cost of implementing new procedures in the nation's 18,000 election jurisdictions is difficult to determine. In preparing this estimate, CBO assumed that local jurisdictions within a state generally follow registration guidelines set out by the state (even though there are some variations). We then compared the states' current guidelines with the requirements in the bill. (CBO relied on state-by-state summaries of registration practices prepared by various election information clearinghouses.)

In so doing, CBO surveyed the election officials in just over half of the states (as well as about two dozen counties of varying sizes). We collected cost information from some states that already provide one or more of the registration procedures mandated in the bill. In addition, some states provided CBO with the fiscal notes prepared for their state legislatures when they were considering one of these options. We also contacted about half of the 14 states that currently do not offer any of the bill's registration methods for their assessment of the bill's likely impact.

Assumptions

Based on this information about the general registration practices in each state and the steps each state would have to take under S. 874, CBO makes the following assumptions regarding implementation that could affect the costs to state and local governments:

In most states, motor/voter would become the primary method of registering voters. Because most people have a driver's license and are required to renew it periodically, a motor/voter system eventually would provide most people with a convenient opportunity to register, especially after a change of address.

Although completing a driver's license application at the state department of motor vehicles (DMV) would be the most common way people would apply for registration, local election officials would remain largely responsible for maintaining accurate voter lists.

The several states with constitutional provisions that would conflict with the bill, such as requiring voters to sign an oath in person in front of a registrar, would change their laws to be consistent with S. 874. Otherwise, those states would have to

maintain separate registration rolls and conduct federal elections separate from other elections. This estimate does not include any cost for such separate elections.

Costs of Registration Provisions

Motor/Voter: DMV Costs.—Based on the experience of the states that already have motor/voter, it appears that the additional cost to states of implementing motor/voter registration would result mainly from hiring additional staff to handle the extra paperwork. For example, state DMVs would need more employees at high traffic locations to continue to process applicants in the same amount of time as they currently do. For the 38 states that do not now have motor/voter, the cost of such additional employees and related expenses could range from $20 million to $25 million annually during the first five years of implementation. Since most states require renewal of a driver's license every four years, costs would decrease in later years, because most people would have had an opportunity to register and only those who move would have to update their registration.

Motor/Voter: Election Official Costs.—Once the DMV receives an application, it probably would forward a copy to the local election official to process the registration, as is current practice in the states that now have motor/voter. While CBO expects that officials in sparsely populated jurisdictions would be able to absorb small increases in the number of applications, others would face increased costs. In especially populous jurisdictions, election officials would have to hire more staff to handle the likely increase in applications and to check for duplicate registrations (although some states with motor/voter report these are less than they had originally anticipated). The extent of this increased workload is difficult to estimate with any certainty. Counties we contacted report that the number of registration applications they handle annually amounts to about 20 percent of the number of registered voters in the county (there are about 125 million registered voters nationwide). Based on information from counties in states that currently have motor/voter, it appears that the workload could increase by 20 percent because of people registering who otherwise would not have registered, duplicate registrations, and ineligible applications.

Assuming the incremental cost for a county election office of handling an additional application is $1.50, then local jurisdictions, in aggregate, would have to pay an additional $5 million to $10 million annually. Some of these costs would only be incurred during the first few years. Once most people are on the rolls and the number of unregistered voters decreases, use of the motor/voter system would decrease as voters would only register if they have moved.

Such costs, however, would be somewhat offset by a reduction in the cost of part-time employees hired to handle the increased workload around each registration deadline. Officials in some states with motor/voter, such as Colorado and Michigan, report that receiving forms from the DMV evenly over the year rather than in a last-minute pre-election rush has allowed them to reduce their part-time hires and use their full-time staff more efficiently. Based on information from several localities that hire part-time staff

during election years, we expect local officials nationwide could save about $10 million in a presidential election year and about $7 million in non-presidential election years by reducing part-time hires. (There would be no savings in non-election years because no part-time help is necessary.)

Motor/Voter: Computer Costs.—Rather than forwarding an application from the DMV to a county registrar, a possible alternative, untested thus far, would be to transmit the voter information electronically. The cost of adding registrants to a jurisdiction's list would be lower if the voter data were transferred to computer by tape or other device rather than entered by hand. Some states have indicated that they would probably implement the motor/voter requirement by switching their record-keeping from paper to computers, and arranging for electronic transfer of data from the DMV system to the voter registration system. Some state officials have suggested that record-keeping would be improved if election officials used signature digitizers to store voters' signatures on computer, but this would cost extra. Although the bill would not mandate states to computerize, in some instances states or counties might decide computerization would be the best action, even though it would require a significant one-time investment in equipment.

CBO has no information on which to base an estimate of how many counties would computerize or how many more states would create a statewide registration system. (Currently, 17 states have one.) Based on data from Election Data Services, it appears that jurisdictions already use computers to maintain lists for about 70 percent to 80 percent of the registered voters in the country. Aside from jurisdictions that might wish to change their existing computer systems, jurisdictions could potentially purchase new equipment to computerize the remaining one-fourth of the nation's voters.

We have examined the costs of existing registration and election systems and have determined that it costs between one dollar and two dollars per voter record for a computer system. Jurisdictions with small populations (less than 100,000) would have to pay closer to two dollars, and jurisdictions with larger populations would have to pay less. For example, a county with 75,000 registered voters could expect to pay in the neighborhood of $150,000 for an elections system. A state with 7 million registered voters would pay about $7 million for a basic statewide system. Computerizing the registration lists for the 30 million to 35 million people in jurisdictions currently without computers could cost up to $60 million to $70 million.

Mail-In and Agency Registration.—Because most voters (we assume 80 percent to 90 percent) eventually would register through the motor/voter system, mail-in and agency registration would serve as alternate means for those few remaining voters who do not have a driver's license. In those states that currently provide one or both of these methods, the number of registrations received from these sources would decrease as voters register instead through the DMV, thereby generating from $5 million to $10 million in annual savings that would partially offset increased costs of motor/voter. If all 24 states that currently do not have mail-in registration were to implement it along with the other two methods, it

would cost them about $1 million to $2 million annually because they would not use mail-in registration as much as states that currently have mail-in registration do.

Almost all states report that they have some form of agency or satellite registration, which in some states means a voter has to swear an oath in front of a deputy registrar at one of several county offices. S. 874 envisions a somewhat expanded type of agency registration in which forms are available at a variety of locations where voters can complete and submit them (or else take them home and mail them in). Again, this would not be a major source of registering voters, and the costs are not expected to be significant in aggregate, although some additional training costs might be necessary to expand the pool of people able to assist voters in completing the forms. Only those states that currently have just a deputy registrar system would have to print extra forms to be available throughout the jurisdiction, but these costs probably would be offset by the reduced amount of work for the registrars and clerks who would not have to register as many voters in person.

Costs of Voter Confirmation Provisions

Because voters usually do not notify election officials of address changes, the names and addresses of outdated registrants often accumulate on the rolls. Election officials revise registration lists to clean out those who have moved, died, or are otherwise ineligible to vote in that jurisdiction. S. 874 would prescribe that whatever method a state uses to maintain accurate registration rolls, it should be uniform and nondiscriminatory. Further, the bill would prohibit states from removing registrants from the list for not voting.

Current Law.—All states now employ some procedure for updating lists at least once every two years (except four states that review lists every four years), though practices may vary somewhat from county to county. About 20 percent of the states canvass all voters on the list. The remaining 80 percent do not contact all voters, but instead target only those who did not vote in the most recent election (using not voting as an indication that an individual might have moved). Of these, about five states simply drop the nonvoters from the list without notice. These states could not continue this practice under S. 874.

Whether states canvass all those on the list or just the nonvoters, most send a notice to assess whether the person has moved. In about 30 states, election officials also provide voters and a way to update or prevent removal from the registration list.

S. 874 would only require that a state's list-cleaning program be uniform and nondiscriminatory. Enactment of this provision is not expected to result in additional costs.

7. Estimate comparison: In testimony before the Committee on House Administration and the Senate Committee on Rules and Administration, several state and local election officials have reported that the National Association of Counties estimated the cost of mail-in registration to be $17 million annually. This estimate, however, does not take into consideration that 26 states already have this type of registration. Further, the estimate does not account for

the offsetting effects of registration through other methods such as motor/voter.

8. Previous CBO estimate: On July 26, 1989, CBO prepared a cost estimate for H.R. 2190, as ordered reported by the Committee on House Administration, May 3, 1989. To reflect additional information received since then, CBO prepared a revised estimate for H.R. 2190 on September 19, 1989.

H.R. 2190 would authorize the appropriation of $20 million for grants to states. S. 874 does not include such a provision, so that cost to the federal government, and the corresponding receipts to states, would be less under the Senate bill.

Otherwise, the estimated cost to state and local governments for S. 874 is approximately the same as that estimated for H.R. 2190. S. 874, while similar to H.R. 2190 in many respects, loosens or eliminates certain requirements, such as special voting procedures and list-cleaning methods, for which CBO did not estimate significant costs. S. 874 would also allow states broad flexiblity in implementing the motor/voter requirement, while H.R. 2190 would mandate states to combine the driver's license form and voting registration form into one. Because the Senate bill would provide greater discretion to states regarding the motor/voter form, states would not have to pay the $1.3 million to $2.5 million it is expected to cost to design the combined form required in H.R. 2190.

9. Estimate prepared by: James Hern.

10. Estimate approved by: C.G. Nuckols, for James L. Blum, Assistant Director for Budget Analysis.

Regulatory Impact

Pursuant to paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee received the following information from the Federal Election Commission as to the regulatory impact of S. 874, as amended, as reported by the Committee:

Federal Election Commission,
Washington, DC, June 23, 1989.

Hon. Wendell H. Ford,
Chairman, Committee on Rules and Administration,
U.S. Senate, Washington, DC.

Dear Senator Ford: This letter responds to your inquiry of June 15, 1989, regarding the probable impact of regulatory and reporting responsibilities assigned to the Federal Election Commission (FEC) under the terms of S. 874, the National Voter Registration Act of 1989.

For the purposes of this impact analysis, the regulations we now contemplate would be limited merely to specifying the contents of the national mail voter registration application form (as proposed in section 7(3)) and, perhaps, specifying the minimum contents of some of the other requisite forms. And too, we would be inclined to specify by regulation the data to be collected by State and local election authorities pursuant to the reporting requirements set out in section 7(4).

In response to the individual items listed in your letter, then:

1. AN ESTIMATE OF THE NUMBERS AND CLASSES OF INDIVIDUALS AND GROUPS WHO WOULD BE REGULATED

The Commission estimates that its regulations and reporting requirements would, like other provisions of the bill itself, have a direct impact on approximately 8,000 State and local election officials throughout the nation who are responsible for conducting voter registration for federal elections. To the extent that registration applicants would also be affected by the contents of the registration forms, it could be said, of course, that all 180,000,000 or so eligible voters in the United States would be tangentially affected.

2. THE ECONOMIC IMPACT OF THE REGULATIONS

Inasmuch as the regulations we currently contemplate would pertain only to the contents of forms otherwise required by the bill, we anticipate no economic impact from them beyond the economic impact inherent in the requirements of the bill itself. The probable economic impact of the reporting requirements, as distinct from the regulations, is addressed under item 4 below.

3. THE IMPACT ON THE PERSONAL PRIVACY OF THE INDIVIDUALS INVOLVED

The Commission's regulations would have no impact on the personal privacy of the election officials themselves. There is some question, however, whether certain items which might have to appear on the proposed national mail registration application form might be perceived by the public as an invasion of personal privacy. Questions regarding political party preference (required by 26 States that conduct closed primaries) and questions regarding race (required by some States in carrying out the purposes of the Voting Rights Act), even if they were made somehow optional, could be viewed as intrusive by applicants in States without these requirements.

4. AN ESTIMATE OF THE TIME, ADDITIONAL PAPERWORK, AND FINANCIAL COSTS OF RECORD-KEEPING REQUIREMENTS

The Commission believes that in order to satisfy even the minimum of the reporting requirements set out in section 7(4), it would be necessary to gather from State and local election authorities data regarding:

The number, method, and disposition of registration applications received,

The method, frequency, and consequences of confirming the voter registration lists,

The number and reasons for other deletions from the voter registration lists,

The number of voters and the percentage of registered voters casting a ballot,

The number, types, and costs of the various mailings required under the bill, and, perhaps,

The number of persons registering by a means other than in person who then vote by absentee ballot.

Although several jurisdictions, notably the larger ones, already routinely collect some or all of these data, a universal requirement for doing so would unquestionably place some additional burden on many election offices. This burden would fall unevenly on local jurisdictions depending on both the size of their populations and the extent of their computerization. We can only estimate, then, that such a reporting mechanism (modeled on the one successfully devised for the Voting Accessibility for the Elderly and Handicapped Act wherein local jurisdictions report to the State, States to the FEC, and the FEC to the Congress) would entail each year on staff month per local jurisdiction and two staff months per State.

The resulting 700 staff years, at an average of $20,000 per year, would amount to a total cost of about $14,000,000 per year borne variously by the State and local governments. This figure would likely decrease over time with increased computerization. Furthermore, such data would prove useful to the State and local offices as well as to political parties, the Postal Service, and the Department of Justice.

Should you or your staff require any further information regarding these or other related matters, please do not hesitate to contact me.

Sincerely yours,

DANNY LEE MCDONALD,
Chairman, Federal Election Commission.

COMMITTEE ROLLCALL VOTE

In compliance with paragraph 7 (b) and (c) of Rule XXVI of the Standing Rules of the Senate, the record of the rollcall vote in the Committee on Rules and Administration during its consideration of S. 874, as amended. To report it favorably, was:

YEAS—6	NAYS—3
Mr. Pell	Mr. Stevens
Mr. Byrd	Mr. Garn
Mr. DeConcini	Mr. McConnell
Mr. Moynihan	
Mr. Adams	
Mr. Ford	

The Chairman presented the proxies of Mr. Inouye, Mr. Gore and Mr. Dodd in favor of the bill. Senator Stevens presented proxies in opposition to the bill for Mr. McClure, Mr. Helms and Mr. Dole. Mr. Hatfield asked to be recorded in the negative.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee on Rules and Administration notes that no changes in existing law are made by the bill as reported.

MINORITY VIEWS OF MESSRS. STEVENS, McCLURE, HELMS, DOLE, GARN, AND McCONNELL

Summary of Views

The National Voter Registration Act of 1989 (S. 874) would federalize our Nation's voter registration system, preempting traditional state authority. Under S. 874, forty-nine states would be required to adopt or maintain systems to register voters in three ways: (a) by applications received through the mail; (b) by simultaneous applications when applying for motor vehicle drivers' licenses; and (c) by applications to all public assistance, unemployment and vocational rehabilitation offices, among others.

Increasing the registration of potential voters is a goal shared by all Members of this Committee.

States are already implementing new and innovative ways to increase voter registration, and we applaud those efforts. Even states with procedures similar to those mandated by S. 874, however, oppose many of S. 874's provisions. They do not support the federalization of voter registration, and they are deeply concerned about the excessive administrative and budgetary burdens S. 874 would impose.

S. 874 would create yet another set of complex federal requirements without providing the states with federal funds to meet these new obligations.

S. 874 would not merely force states to adopt new methods for registering voters; it would also require unsupervised registration and would explicitly strike down procedures many states use to verify the authenticity of registration applications. These procedures exist in many jurisdictions for good reason. There is a positive correlation between the relative restrictiveness of registration laws within electoral jurisdictions and the incidence of reported fraud within those jurisdictions.[1] Unless it is changed, the bill will open the door to increased vote fraud in our country.

For the first time, this bill would subject all state voter registration systems to the regulatory control of the Federal Elections Commission—an entity many have criticized for being unable to satisfactorily carry out its current federally mandated duties.

Finally, the constitutionality of S. 874 has been strongly questioned by the Department of Justice in a letter that is included later in this report.

Our voter registration system has been administered primarily by state and local officials throughout our nation's history. Absent evidence of discriminatory registration practices (which triggers supervision by the Justice Department under the Voting Rights Act),

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[1] The Committee for the Study of the American Electorate, *Creating the Opportunity: How Voting Laws Affect Voter Turnout* (Washington, D.C.: CSAE, 1987), p. 16.

a state or locality has been presumed to be the best qualified entity to design voter registration programs to ensure full and fair voter turnout in its jurisdiction. As a 1987 study concluded:

> The Committee and the advisers of this study believe that the control, conduct, administration, and most of the initiation of election law lies properly in the hands of state and local officials, who know best the particular problems of their state and locality.[2]

The 1987 study argues for a multi-pronged strategy, including some federal action such as assistance in maintaining accurate voting lists (similar to a provision in H.R. 2190 approved by the Committee on House Administration) and "monetary incentives for the states to enact new laws" for improved registration.[3] The study envisions the establishment of federal *incentives* to improve voter registration, not the imposition of rigid, unfunded *mandates* on state and local officials.

Many state and local election officials have commented on the problems associated with S. 874. A series of amendments were offered in Committee to address their concerns. None was accepted.

I. Turnout and Registration

National Voter turnout percentages have dropped in recent years. This decline has occurred at a time when voter registration laws were becoming less, not more, restrictive. Registering to vote is easier today than before. Clearly, something other than the relative openness of voter registration procedures is behind the decline in voter turnout. And just as clearly, federalizing voter registration will not solve the turnout problem.

One central reason for the drop in voter turnout is the move of the so-called "baby boom generation" into young voting-age brackets. This move occurred in the 1970's during a general disenchantment with government and resulted in a greatly depressed voter turnout. At the present time, younger people vote less frequently than their elders. Further, eighteen to thirty-five year olds are less likely than older citizens to be settled into a community and to have developed regular voting patterns.

Moreover, 1971 saw the expansion of the franchise to eighteen to twenty year olds—a group with no previous history of voting. The reluctance of millions of these new voters to vote led to a decline in voter turnout percentages even while total number of voters increased.

Some witnesses before the Committee asserted that registered persons vote in high percentages—as high as 80% and 90%. Those witnesses assumed, therefore, that voter turnout would be increased simply by registering more voters. In support of the proposition, a *CBS-New York Times* poll of non-voters in the 1988 elections was cited. In that poll, one-third of the non-voters said they did not vote because they were not registered.[4]

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[2] *Ibid.*, p. 18.
[3] *Ibid.*, pp. 18–19.
[4] "Post-Election Survey," *CBS-New York Times Poll;* November 10–16, 1988.

The response to the next question in that same poll, however, was not discussed. *When asked why they were not registered, ninety-seven percent of non-voters gave reasons other than problems in registering. Fifty-six percent could not give a reason or said they had no interest in the election.*[5] In other words, voter registration procedures did not deter potential voters.

The percent of the respondents said they were not registered because they had moved.

Voter registration at driver's license bureaus is one way to register these recently relocated citizens. Twelve states have this procedure and each one has tailored it to fit the individual needs of its election system. The federalization of this procedure as required under S. 874, however, would entail significant administrative and cost burdens as detailed below. Even some of the states currently using the procedure oppose the language of S. 874.

The proposition that increased registration should increase turnout conflicts with state experience. The Congressional Research Service examined the impact of election day registration in those states that allow it. Election day registration, one of the most sweeping of all voter registration reform proposals, has gained the support of those who believe it would dramatically increase voter turnout. However, the Congressional Research Service found that in states which instituted election day registration voter turnout actually dropped:

> even though these states have adopted election day registration, their percentage turnout is lower in each of the Presidential election years shown [i.e., in elections during the period 1976 to 1988] . . . than their average turnout in prior Presidential elections.[6]

Increased voter turnout will occur when there is real political competition. With a 98.5% reelection rate in the 1988 House of Representatives' races, those elections tend to draw less interest. Good government doesn't demand federalization of our voter registration systems. It demands increased political competition and that means a reduction in federal incumbency advantages.

Another favorite theme of proponents of this legislation in the Committee was the "dismal" state of voter turnout in the U.S. vis-a-vis other established democracies. Although the raw voting percentages in U.S. national elections are below the percentages of other nations, this comparison is misleading.

The two "low" voter turnout countries internationally are the United States and Switzerland. These two nations also hold elections more often than other countries.

Indeed, Americans are called to the polls more often than the citizens of virtually any other democracy in the world. Our system of government has a plethora of elections—federal, state, local, general, primary and referendum. One study of six states revealed

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[5] *Ibid.*

[6] Royce Crocker, "Voter Registration and Turnout: 1948–1988;" Congressional Research Service Report (1989), p. 12. (This does not mean that such registration changes necessarily depressed election turnouts—only that turnout falloffs after sweeping registration reforms indicate such changes do not stimulate increased voter participation.)

that the mean number of elections per town was over two elections per year.[7]

A political scientist who undertook a comparative study of turnout rates in major democracies concluded:

> I would agree then that the frequency of elections in the United States is one explanation of the somewhat lower voting rate we experience in any given election compared to European countries.[8]

Another author concludes:

> turnout rates do not indicate the amount of electing—the frequency of the occasion, the range of offices and decisions, the "value of the vote—to which a country's citizens are entitled. Thus, although the turnout rate in the United States is below that of most other democracies, American citizens do not necessarily do less voting than other citizens; most probably, they do more.[9]

Statistical anomalies also tend to make American turnout figures appear lower than other countries' turnout figures. For example, U.S. turnout is shown as a percentage of voting age population. This includes all individuals over eighteen as "potential voters" even though this group includes resident aliens, felons, etc., who are ineligible to vote. In the figures for most other Western democracies, turnout is defined as votes cast as a percentage of *registered* voters. Shown this way, foreign turnout percentages will naturally appear higher.

If the proponents of S. 874 fear that American democracy has become moribund due to low voter turnout, they should take heart in the knowledge that Americans are generally among the most active voters in the world. This is true despite the fact that our voter registration systems is voluntary, a stark contrast to the expensive or intrusive systems used in most of the rest of the democratic world which produce more "impressive" turnout rates.

Many of these systems have characteristics most Americans would abhor. For example, West Germans are issued identification cards, required to report to police or other central authorities each time they move and are automatically registered to vote.

Similarly, Americans would not support a voting system which levie fines for not voting (as in Australia) or not cooperating with registration officials (as in the United Kingdom); nor would they support a system that singles out non-voters and stigmatizes them (Italy stamps "did not vote" on non-voting citizens' official documents).

II. Mail Registration

The Department of Justice believes that "S. 874's provision for registration by mail would entail a substantial and perhaps prohib-

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[7] Richard W. Boyd, "Decline of U.S. Voter Turnout, Structural Explanations," *American Politics Quarterly*; No. 2, Vol. 9, (April, 1981), pp. 133-159.

[8] *Ibid.*, p. 146.

[9] Ivor Crewe, *Democracy at the Polls: A Comparative Study of Competitive National Elections*, ed. D. Butler, H.R. Penniman, & A. Ranney (Washington, D.C.: American Enterprise Institute, 1981), p. 262.

itive risk of enhancing the opportunities for fraudulent registration and voting." [10]

S. 874's mail registration requirement explicitly prohibits requirements for notarization or authentication of potential voters' signatures and implicitly prohibits documentary requirements some states use to determine that persons registering are who they claim to be or live where they say they do.[11] Additionally, S. 874 requires states to accept voter registration applications from anywhere. By eliminating all state verification requirements with mail-in applications, S. 874 would shift the burden of proof from the applicant to the state.

Even states with existing mail registration programs have opted to retain verification requirements. In Alaska, all registration applications received through the mail must be authenticated by the signatures of two adults. Other states require notarization of these applications. All of these requirements would be terminated by S. 874.

Mail registration ends in-person registration and states will be prohibited from asking applicants to supply identification when registering. Currently, Connecticut requires a birth certificate, driver's license, or Social Security card to be shown at the time of registration. New Hampshire officials have the authority to require similar identification from applicants who are naturalized citizens.

S. 874's mail registration provision paves the way for unsupervised, unverifiable registration—an unworkable procedure.

In 1982 a New York Grand Jury reviewed widespread vote fraud charges in Kings County from 1968 to 1982. It observed:

> The advent of mail-in registration in 1976 made the creation of bogus registration cards even easier and less subject to detection. In a laudable effort to increase voter registration, the Board allows almost any organization to obtain bulk quantities of these cards by presenting to the Board the letterhead stationery of that organization. The cards contain no identifying serial number at the time they are given out [a previous practice discontinued with mail registration].
>
> According to testimony, mail-in registration has become the principal means of perpetrating election fraud and has apparently resulted in the abandonment of the pre-1976 election fraud methods.[12]

Last year Elizabeth Holtzman, the District Attorney of Kings County, wrote *The New York Times* lamenting "how easy it is to vote illegally" in New York and called for implementation of the recommendations contained in this Grand Jury Report. Under S. 874, New York would be prevented from ending what the Grand

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[10] Carol T. Crawford, Asst. Attorney General, U.S. Department of Justice: Letter to the Honorable Wendell H. Ford, Chairman, Committee on Rules and Administration; June 7, 1989.

[11] Such verifications would be prohibited by proposed Section 7(3)(C) which forbids a mail registration form from having ". . . any requirement for notarization or other formal authentication."

[12] Supreme Court of the State of New York, County of Kings: Criminal Term, *In the Matter of Confidential Investigation R84-11*, pp. 11-12.

Jury said had now become "the principal means of perpetrating election fraud."

The State of Illinois requires signatures on voter registration applications to be made in front of a registrar. On election day, the signature on the registration form is compared with the signature of the person seeking to vote under that registration form to guard against "ghost voting".

By implication, S. 874 would prohibit this verification procedure. The Chairman of the Board of Elections from Illinois testified that S. 874's mail registration program would prevent verification of the original voter application and "would destroy the signature verification process—a key factor in the prevention of vote fraud." [13]

This verification system helped a Grand Jury examining voter fraud in the 1982 Chicago election secure 62 indictments resulting in at least 56 convictions. The sweeping extent of the vote fraud problem in Chicago prompted the Grand Jury to take the unusual step of issuing a public report on its findings.[14]

Much of the evidence in this case was based on the work of FBI handwriting experts who compared the signatures on authenticated voter registration cards with signatures made at the polling booths. Such detection would have been impossible if mail registration as mandated by S. 874 were in place.

With mail registration under S. 874, the perpetrators could have easily escaped FBI detection and federal prosecution by simply filling out fraudulent registration post cards and, on polling day, signing ballot applications. The signatures would then have been identical.

S. 874 would also prohibit Illinois from instituting one of the main Grand Jury recommendations: non-ink thumbprints on all voter registration cards and ballot applications.[15] The effectiveness of such a system would be greatly undermined if the filling out of registration applications is unsupervised as S. 874 requires.

Even with Chicago's signature verification system, a U.S. attorney has estimated that up to 100,000 fraudulent ballots were cast in *each* of the Chicago elections of 1982 and 1986.[16] It is difficult to imagine what the extent of the vote fraud problem in that city would be if its signature verification procedures were prohibited by S. 874.

In California, mail registration led to fraudulent fillings with a phenomenon called "creative writing". This state experienced fake and duplicate registrations because of paid registration drives in which registrations were filed, often without knowledge of the "applicant", simply to fill a quota. The problem led this state to hire an investigator to guard against this kind of fraud.

Nationwide mail registration, as proposed by S. 874, raises the very real specter of adding to America's illegal immigration problems. Illegal aliens have used easy availability of voter registration

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[13] Theresa M. Petrone, Chairman, State Board of Elections, State of Illinois: Testimony to Senate Committee on Rules and Administration; May, 1989.

[14] U.S. District Court, Northern District of Illinois, Eastern Division: *Report of the Special January 1982 Grand Jury*, pp. 3-6.

[15] *Ibid.*, pp. 22-23.

[16] Mark Eissman, "Massive Fraud Found in Mayoral Primary," *Chicago Tribune;* March 8, 1986, Section 1, p. 1 and 18.

cards as a means to gain entry into the United States. Voter registration cards have also been used to gain access to federal and state benefits and even jobs with the federal government.

The Grand Jury sitting in Chicago reported:

> Another pool of potential votes for the unscrupulous precinct captain was that of aliens who were illegally registered. Many aliens register to vote so that they can obtain documents identifying them as U.S. citizens; however, the number of aliens who actually voted is undocumented. We have learned that these aliens used their voters' cards to obtain a myriad of benefits, from Social Security to jobs with the Defense Department.[17]

S. 874 would mandate that voter registration cards be accepted by states through the mail from any location in the U.S. (and even around the world for that matter). Therefore, there is the potential for citizens of one state to use mail registration to gain access to another state's benefits.

Alaska, in addition to witness signatures, requires all out-of-state mail registration applicants to provide "identification or other documentation that supports . . . a claim to Alaska residency."[18] This precaution would be prohibited under S. 874.

S. 874 would require all mail registration applications to be processed if postmarked up to thirty days before an election. The Alaska Division of Elections has reviewed absentee mail ballots and found that almost thirty percent of them had illegible postmarks. This would be a problem around the nation and could unintentionally disenfranchise many voters.

Election fraud disenfranchises voters. It erodes confidence in our democratic traditions. Unfortunately, it is not a problem confined to the past and, in some areas of the nation, it will continue to be a problem in the future. The mail registration provisions of S. 874 would strip the states of their ability to deal with these election fraud problems.

III. Department of Motor Vehicles Registration

Section 3 of the bill requires that ". . . each State motor vehicle driver's license application (including any renewal application) submitted to the appropriate State motor vehicle authority under State law . . . serve as an application for voter registration with respect to elections for federal office."[19] All driver's license applicants will be registered to vote unless an applicant specifically declines in writing.

State election officials have raised concerns about the administrative burden and expense imposed by this requirement. Even officials from states that now permit such registration are concerned.

The Committee has been told the requirement to register all but those who decline in writing would lead to a high incidence of duplicate registrations. Furthermore, this automatic or passive registration feature would greatly increase the number of ineligible in-

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[17] *Report of the Special January 1982 Grand Jury*, op. cit., pp. 8–9.
[18] 6 Alaska Administrative Code 25.027(c).
[19] Section 3 (a); S. 874.

dividuals attempting to register to vote, e.g., underage and out-of-state individuals—including aliens—who must, under state law, be licensed to drive. Sorting out such ineligible and duplicate applications will be expensive.

In its cost estimate of the bill, the Congressional Budget Office assumes that the rates of duplicate and ineligible registration applications will be similar to the rates states with motor/voter registration now experience. No state, however, relies on a passive registration procedure such as S. 874 would require.

The consequences of inadvertent registration by the automatic motor/voter registration procedure required under this bill could be serious. For example, students in out-of-state schools are often required to obtain local drivers' licenses. Should they inadvertently register, they could lose their homestate residencies and benefits such as college aid. Inadvertent registration can also adversely impact court jurisdictional issues and tax obligations.

Under an amendment rejected by the Committee to explicitly permit state use of separate forms for licenses and registration, most existing state motor/voter registration programs could have remained intact. Under S. 874 as reported, however, most programs would need modification and would experience the added expense of sorting to eliminate increased duplicate and ineligible applicants.

The rejected amendment also would have permitted the easiest and most typical form of motor/voter registration procedure. Drivers' license applicants would be informed of the opportunity to register to vote. Those that responded affirmatively would be presented with a separate form that, when completed, would be forwarded to an election office.

S. 874's inflexibility will require that Congress involve itself in the smallest details of state and local procedures. We question the appropriateness of Congressional involvement in the minutiae of such procedures to the extent of stipulating even how the forms should look.

The Congressional Budget Office estimated total state and local compliance costs for S. 874 at $20–25 million. However, every state that has estimated these costs placed them at many times this amount (see table below). A significant portion of these added state costs are attributable to the stringent requirements of this section.

Public convenience is certainly a worthy governmental goal and aspects of S. 874 could, if it provided greater flexibility, serve this purpose. A more flexible motor/voter registration provision could significantly increase the convenience of registering while greatly reducing the bill's costs.

IV. Agency Based Registration

The bill would require all public assistance, unemployment, and vocational rehabilitation offices among others to register every person who receives benefits from those offices unless the person indicates in writing that he or she does not wish to be registered.

In its letter to the Committee, the Department of Justice wrote that in its experience:

> public officials sometimes use their power to dispense or withhold benefits in order to pressure citizens into voting a particular way or registering for a particular party. In its present form S. 874 would increase substantially the opportunities for such intimidation and coercion of the public, while doing nothing to prevent it.[20]

Even the appearance that a person's public assistance benefits are linked to registering to vote violates the American tradition of voluntary participation in the political system. It should not be required by the federal government.

V. Costs

All ten governmental entities that estimated the cost to their jurisdictions of S. 874 or H.R. 2190 as reported by the House Administration Committee concluded that the costs would be far higher than the estimates of the Congressional Budget Office. (C.B.O. believes the costs of these two bills will be substantially the same.) The following table summarizes these estimates:

[In millions of dollars]

Alaska	.4
California	17.2
(Independent estimate Los Angeles County, CA—4.5	
Florida	6.4
Illinois	30.4
(Independent estimate Dupage County, IL—.15)	
Kansas	.5
New Jersey	20.3
Oklahoma	1.3
Virginia	5.2
Total	80.35

This substantial total is the one year price tag for only the *eight* states who have examined this legislation. It stands in stark contrast to the estimate of the Congressional Budget Office of $20–25 million in annual costs (together with national computer upgrade costs—which C.B.O. claims are unneeded to comply with the bill—of $60–70 million) for all *fifty* states.

Throughout its report, C.B.O. expresses its frustration with the complexity of its task given the wide variations among our nation's 18,000 election jurisdictions. The cost of this bill, we are told, ". . . is difficult to determine." [21] Elsewhere, C.B.O. states the cost of the increased workload of S. 874's motor/voter provisions ". . . is difficult to estimate with any certainty." [22]

While C.B.O. is free to complain about the complexity of our voter registration systems and then blandly assume uniformity nationwide to compile its estimates, state and local jurisdictions should not have to live with the consequences of such work. They will have to pay for this bill and conform to its requirements.

Members should be reluctant to enact legislation with the potential of S. 874 to add new, major expenses to the budgets of most state and local governments. It represents another set of mandates

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[20] Crawford, op. cit., p. 8.
[21] Congressional Budget Office, op. cit., p. 4.
[22] *Ibid.*, p. 6.

for states and local governments to follow without any financial commitment from the Federal government to cover these additional costs.

VI. Conclusion

Although greater voter participation is a goal shared by all Members of the Committee, S. 874 as reported will not increase voter turnout. What will increase are costs to state and local governments and opportunities for election fraud.

The lion's share of any new registration under S. 874 is expected to be done at Departments of Motor Vehicles. In its estimate of the cost of the Committee bill, the Congressional Budget Office assumes that both mail registration and agency based registration under S. 874 will account for only a small portion of the new registrations. The bill as written, therefore, risks significant new opportunities for vote fraud and improprieties by governmental agencies for no significant increase in voter participation.

Rather than assisting state efforts to implement forward-looking, innovative voter registration programs, S. 874 is imposing obligations that are impractical and ineffective. We think the bill needs substantial improvement before the Senate sends it to a conference with the House of Representatives.

U.S. Department of Justice,
Office of Legislative Affairs,
Washington, DC, June 7, 1989.

Hon. Wendell H. Ford,
Chairman, Committee on Rules and Administration,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: This letter presents the views of the Department of Justice regarding S. 874, the National Voter Registration Act of 1989. S. 874 would establish national voter registration procedures for presidential and congressional elections. Although the Department strongly endorses the bill's general goal of involving more Americans in the electoral process, we would oppose enactment of this bill.

We question the premise on which the bill appears to be predicated—that registration requirements are a principal cause of low voter turnout—which is not supported by any empirical evidence. The bill also would impose substantial costs and would present a serious potential for increased voting fraud. Moreover, absent any showing of a threat to the integrity of the electoral process or the discriminatory treatment of particular groups of citizens, the bill might well exceed the constitutional authority of Congress by involving the federal government in matters which the Constitution allows the states to regulate as they deem appropriate.

We do not believe that the goal of increased voter participation can or should be achieved by a federally-mandated relaxation of voter registration requirements nationwide. We believe that voter turnout is often more a reflection of the degree to which individual citizens care about voting than it is of the ease or difficulty of com-

plying with state registration requirements.[1] Increasing the percentage of eligible voters who are registered to vote in no way guarantees that a higher percentage of eligible voters will actually vote. This can be illustrated by comparing voter turnout in North Dakota, which has no voter registration at all (so that all eligible voters may vote), with that in neighboring and generally culturally similar South Dakota, which has typical pre-registration laws. Notwithstanding the sharp difference in voter registration requirements, in the last five Presidential general elections the percentage of the voting age population actually voting in North Dakota has been more or less identical to that in South Dakota.[2] Moreover, as Dr. Herbert Alexander of the Citizens' Research Foundation and the University of Southern California, a nationally known expert on election administration, recently noted, North Dakota "has suffered a serious decline in voter turnout, at a rate higher than the national average." [3]

At the outset, we note that S. 874 would unnecessarily intrude into areas of legitimate state discretion. Congress has only limited constitutional power over the conduct of elections, even elections for federal officials. Congressional power over presidential elections is described in Article II, section 1, clause 4 of the Constitution: "The Congress may determine the Time of Chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States." Congress has broader power to regulate elections for Senators and members of the House of Representatives: "The Times, Places, and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators." U.S. Const., Art. I, § 4, cl. 1. Electors for Senators and Representatives in each state are to have the same qualifications as those of the most numerous branch of the state legislature. Art. I, § 2; amend. XVII. Although the Supreme Court has recognized that Congress has general power to regulate presidential elections to the extent necessary to prevent fraud and preserve the integrity of the electoral process,[4] Congress may not

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[1] To be sure, voter registration requirements at times have been used as instruments of discrimination against minorities. Those abuses were instrumental in leading to passage of the Voting Rights Act. That Act has done much to eliminate discriminatory registration requirements. We also recognize that there are times when minority voters who have been discriminated against in the electoral process may not vote because they have been intimidated or because of the belief that they will not have an opportunity to elect the candidates of their choice. While continued vigilance and vigorous enforcement of the Voting Rights Act remain crucial, we do not believe that the current record supports enactment of this further federal response.

[2] *See* W. Kimberling & A. Flor, *Technical Report 1, Federal Election Statistics* (Federal Election Commission Clearinghouse, April 1989). The figures have been as follows:

[In percent]

State	1988	1984	1980	1976	1972
North Dakota	61.54	62.67	64.57	67.24	68.25
South Dakota	61.49	62.57	67.15	64.11	69.39

[3] *Election Administration Reports*, Vol. 19, No. 9 (May 1, 1989), at 5.

[4] *See Burroughs* v. *United States*, 290 U.S. 534 (1934) (upholding a federal law imposing record keeping requirements on political committees that accept contributions or make expenditures

Continued

exercise this authority in a manner that "interfere[s] with the power of a state to appoint electors or the manner in which their appointment shall be made." [5] Thus, while Congress has some authority to preserve the integrity of the federal election process by taking steps to prevent fraud, it cannot encroach upon the exclusive power of the states to regulate the manner in which elections are conducted.

Although the precise scope of Congress' power over federal elections is uncertain,[6] we believe that there is a serious question of whether S. 874 may be defended as a permissible exercise of constitutional power. Congress does not have plenary authority to dictate the procedures which a state must employ in elections for federal officials. There is no suggestion that S. 874 is designed to prevent fraud and corruption. Nor is there any showing that this bill will eliminate any discriminatory practices. Accordingly, we question whether this bill is constitutional.

Apart from the question of Congress' power, S. 874 would operate to deny the states their historic freedom to govern the electoral process and would interfere with the conduct of unrelated state programs. The flexibility which the Constitution generally gives the states recognizes that different cultural and demographic circumstances may call for different approaches in many areas, including voter registration. For example, registration procedures sufficient to prevent substantial fraud in a sparsely populated, mostly rural state may not be adequate for a more densely populated state with major metropolitan centers and large population inflows and outflows. Depriving the states of this flexibility to tailor their individual approaches to their own particular problems and circumstances—by imposing a single, uniform policy nationwide—forecloses the benefits that would otherwise come from diversity.

In practical terms, S. 874 would impose two significant kinds of costs on the states. The mandated registration methods would inevitably provide greatly increased opportunities for voting fraud—thereby undermining the integrity of the national electoral process. Moreover, S. 874 probably would require substantial added costs to the states. It would not merely regulate state registration procedures but, by virtue of Sections 3 and 5, it would also regulate or at

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for the purpose of influencing the election of presidential or vice-presidential electors); *see also Buckley* v. *Valeo*, 424 U.S. 1, 13 (1976) (upholding a federal law regulating campaign contributions against a First Amendment challenge and observing in dicta that the constitutional power of Congress to regulate federal elections is "unquestioned").

[5] *Burroughs*, 290 U.S. at 544.

[6] The power of the states to establish certain qualifications for voting in the election of Senators, Representatives, and the President is limited by several constitutional amendments. *See* U.S. Const. amend. XV (race, color, or previous condition of servitude); amend. XIX (sex); amend. XXIV (poll taxes); amend. XXVI (age). In *Oregon* v. *Mitchell*, 400 U.S. 112 (1970), the Supreme Court upheld a provision of the Voting Rights Act Amendments of 1970 which lowered the minimum age of voters in federal elections from 21 to 18, but the justices could not agree as to the proper basis for the Act's constitutionality. Justice Black believed that Congress has broad authority to set qualifications for voters for electors for President and Vice President, *id.* at 119-24, but four other justices denied that Congress has such power, *id.* at 209-12 (Harlan, J.) and 287-92 (Stewart, J., with Burger, C.J. & Blackmun, J.), while three justices expressly refused to consider Congress' authority to set qualifications for voting in federal elections. *Id.* at 237 (Brennan, White & Marshall, JJ.). The Court split on whether the Act was supported by Congress' power under the Fourteenth Amendment to prohibit discrimination on the basis of age, *compare id.* at 135-44 (Douglas, J.) & 239-81 (Brennan, White, & Marshall, JJ.) *with id.* at 154-200 (Harlan, J.) and 293-96 (Stewart, J., with Burger, C.J. & Blackmun, J.). This issue, however, is not raised by S. 874.

least substantially interfere with the issuance of motor vehicle driver's licenses, the provision of public assistance, unemployment compensation and related services, and the performance of other such traditional state functions.[7] While the bill does not (at least on its face) raise the special concerns we would have if it were to attempt to regulate registration procedures for elections of state officers generally, it most likely would coerce the states into following the same procedures for state elections as well.[8]

S. 874 would require all states except those that have no voter registration requirements at all (i.e., all states except North Dakota) to adopt three additional methods for allowing individuals to apply to register to vote: simultaneously with an application for a motor vehicle driver's license (Section 3), by mail (Section 4), and in person at various federal, state and private-sector locations where the public is served directly (Section 5).[9]

The first of these methods is relatively unobjectionable from a criminal law perspective. The Department's experience in prosecuting voting fraud cases suggests that combining the process of applying to register to vote with that of applying for a motor vehicle driver's license would have little adverse impact on the incidence of voting fraud. Moreover, because there is some degree of overlap between the factors involved in a license application and those involved in a voter registration application, personnel who are already familiar with license application procedures should be relatively easy to train as voting registrars. However, S. 874 would still have the drawback of making state driver-licensing procedures more expensive for the states and more complicated for license applicants (many of whom would already have registered through the normal voter registration mechanisms while those under the age of 18 would not be eligible to register to vote).

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[7] For example, the bill does not contain any provision exempting jurisdictions otherwise covered by the Voting Rights Act from the Act's requirements when they are implementing the requirements of this bill. Sections 4(f)(4) and 203 of the Act state: "Whenever any State or political subdivision subject to the prohibition[s] of . . . this section provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall provide them in the language of the applicable language minority group as well as in the English language . . . ."

42 U.S.C. §§ 1973b(f)(4), 1973aa-1a. Because of these provisions regarding voter registration forms and materials, the bill might have the effect of requiring covered states to expand the multilingual requirements under that Act to cover applications for driver's licenses, public assistance, etc. Likewise, states covered by the preclearance provision under Section 5 of the Act, 42 U.S.C. § 1973c, might have to obtain preclearance of some kinds of changes with respect to driver's license registration or public assistance to the extent that they affect voter registration as well.

[8] Because the bill ostensibly would apply only to registration for voting in federal elections, the states still would be free to employ a different set of procedures with regard to registration for voting in state elections. However, the prohibitive cost of maintaining two parallel sets of voter registration procedures most likely would induce most states simply to comform their state registration procedures to federal standards, thereby economically coercing the states into abandoning their constitutional prerogative to determine the qualifications for voting in state elections.

Apart from the cost of maintaining two parallel sets of voter registration procedures and voter rolls, this state of affairs could cause considerable confusion on the part of voters who may misunderstand that limited scope of the federal registration procedures and mistakenly believe that they are registered for all purposes. However, the comments in the remainder of the text refer only to the increase that would be effected in the cost of administering a single voter registration system in each state.

[9] We note that S. 874 does not attempt to impose registration on the day of election. In this respect, we find it vastly preferable from a criminal law enforcement, fraud-avoidance perspective to another bill concerning voter registration that is currently pending in the Senate, S. 675.

Registration by mail is more susceptible to misuse because a would-be registrant never has to appear in person before a registrar. Although the Department's experience to date with voting fraud cases has not shown that registration by mail has a substantial impact on the incidence of voting fraud, the reason for this is that most of the states which already have registration by mail also have procedures for independently confirming the information provided in voter registration applications. As it presently stands, S. 874 has no such confirmation procedures at all.[10] For this reason we believe that S. 874's provision for registration by mail would entail a substantial and perhaps prohibitive risk of enhancing the opportunities for fraudulent registration and voting.[11]

The third method of voter registration provided in S. 874—application in person at various federal, state or private-sector locations where the public is served directly—is also troublesome. This provision would have the effect of diverting state resources from their chosen purpose, and of making the procedures for obtaining various services from the state more expensive for the states and more complicated for the applicants (many of whom, again, would have no need to register to vote). Moreover, it would entrust the task of registering voters to individual government and private personnel who may lack training in and sensitivity to the unique factors involved in preventing voting fraud and establishing and maintaining accurate and up-to-date voter registration lists.[12]

This approach also would also risk various forms of intimidation of the public. We question whether it would be appropriate for tax assessors or welfare case workers, for example, to be handing out voter registration materials and information. In such circumstances, people seeking tax relief, public assistance benefits, building permits, etc. could easily get the impression that they *have* to register in order to please the administrator in whose hands the fate of their application rests. The Department's experience demonstrates that public officials sometimes abuse their power to dispense or withhold benefits in order to pressure citizens into voting a particular way or registering for a particular party.[13] In its

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[10] H.R. 2190—another bill concerning voter registration that is currently pending in the House—would require mail voter registration application forms to include an attestation by the applicant, under penalty of perjury, that he or she meets all eligibility requirements. However, Section 3 of H.R. 2190 and Section 4 of both bills require the "signature of the applicant" on the registration application form. We are concerned that this language could prevent persons who are unable to write their names from registering in accordance with these provisions. Neither bill would require notarization or any other form of formal authentication.

[11] As an additional matter, it is doubtful whether any procedures that attempt to confirm registration information simply by mailing a nonforwardable registration verification card will be adequate to prevent fraud given present Postal Service policies. (The idea behind such a procedure would be to remove a registrant from the list of eligible voters if the verification card is returned by the Postal Service as nondeliverable). We have been informed that, under its present policies, the Postal Service will not return a piece of nonforwardable mail to the sender before attempted delivery unless the addressee has submitted a change of address card. If the addressee has never submitted a change of address card, the Postal Service will not have a record that the addressee does not receive mail at the address and will attempt to deliver it. In this case, the sender, however, would not receive the non-forwardable mail unless it was returned to the Postal Service by the person living at the designated address.

[12] As noted previously, personnel employed in a state's department of motor vehicles should be relatively easy to train as voting registrars because of the degree of overlap between the factors involved in a driver's license application and those involved in a voter registration application. The same cannot be said of other state (let alone private) personnel such as tax assessors, welfare case workers, and sales people in state liquor stores.

[13] *See, e.g.*, United States District Court, Northern District of Illinois, Eastern Division, *Report of the Special January 1982 Grand Jury.*

present form S. 874 would increase substantially the opportunities for such intimidation and coercion of the public, while doing nothing to prevent it.

Another potential for fraud is created by the provisions in Sections 6(a)(3) and 6(b) restricting removal of voters from official voter lists. The grounds provided for removing voters from the lists—at the request of the voter or in the event of the death, mental incapacitation, criminal conviction or change in residence of the voter—are appropriate. But those grounds assume that registration officials receive some notice of the change in circumstances; they are not self-implementing.[14] Accordingly, registrars ordinarily rely as well upon a continued failure to vote—the passage of some minimum number of years, or the occurrence of some minimum number of elections—as a ground for removing voters' names from the list. S. 874 would significantly restrict this ground for removing voters' names.

Under Section 6(a)(3)(D) and 6(b), voters could be removed only in the event of their "failure to vote in each of 2 consecutive Presidential general elections and at least one Congressional election or election for State office between such 2 consecutive Presidential general elections," except that those registered through the motor vehicle process can not be removed from the list as long as they hold a valid driver's license. This provides the states far too little leeway to protect against voting fraud by periodically purging the voting rolls of those who have not voted in some time. It would be possible for a voter to remain on the list of eligible voters from four to eight years after he or she has died, moved away, or otherwise ceased to be eligible to vote in the state in question—and indefinitely as long as the voter's driver's license continues to be renewed (properly or improperly).

In our experience prosecuting voting fraud cases, the maintenance of names on official lists of eligible voters long after eligibility has ended is among the most significant factors contributing to ballot box stuffing and illegal "proxy" voting.[15] On the other hand, we recognize that various methods of purging voters from the rolls have been used in the past to deny the franchise to minority voters. Certainly, vigilance remains necessary to prohibit purging schemes from discriminatorily excluding minority voters; that calls for vigorous enforcement of the Voting Rights Act. In our view, in order to accommodate these varying concerns, we firmly believe that the choice of a specific waiting period should be left up to the individual states to make based on their own particular experience and circumstances, subject to the requirements of the Voting Rights Act.

For all of the foregoing reasons, the Department of Justice recommends against enactment of S. 874.

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[14] Registration officials are unlikely to find out when a registered voter has changed his or her voting residence if the voter hasn't bothered to inform them. Similarly, registrars would need to receive notice of deaths or convictions before removing voters' names on those grounds.

[15] *See, e.g., United states* v. *Gordon*, 817 F.2d 1538 (11th Cir. 1987); *United States* v. *Howard*, 774 F.2d 838 (7th Cir. 1985); *United States* v. *Olinger*, 759 F.2d 1293 (7th Cir. 1985); *Ingber* v. *Enzor*, 664 F. Supp. 814 (S.D.N.Y. 1987). *See also* United States District Court, Northern District of Illinois, Eastern Division, *Report of the Special January 1982 Grand Jury.*

The Office of Management and Budget has advised this Department that there is no objection to the submission of this report from the standpoint of the President's program.

Sincerely,

CAROL T. CRAWFORD,
Assistant Attorney General.

STATE OF ALASKA,
Juneau, September 12, 1989.

Hon. TED STEVENS,
U.S. Senate,
Hart Senate Office Building,
Washington, DC.

DEAR TED: I appreciated your representation of Alaska's interests during the Senate Rules Committee hearings on S. 874, relating to "motor voter" registration.

I recognize that S. 874 focuses on registration for federal elections. However, like most jurisdictions, in Alaska, a single voter registration application qualifies voters for all elections, federal, state, and local. If the single application procedure is to be maintained, imposition of the arbitrary provisions of the federal legislation would extend far beyond federal elections and significantly infringe on the state's right to govern its own procedures for state and local elections.

Alaska already implements a statewide voter registration program which employs variations on many features suggested by the proposed legislation. These include our own "motor voter law," mailing registration procedures, widespread use of public agencies for distribution of registration materials, and nearly 3,000 appointed volunteer registrars who assist voters in registering.

The relevant state statutes governing voter registration programs were tailored specifically to meet the unique needs and desires of Alaska's vastly diversified population. The state's procedures will not necessarily be satisfied or improved by the legislation. For example, the proposed law assumes that most or all applications for driver's licenses are made in person. As you are aware, this is not the case in Alaska, where many applicants apply for or renew their licenses by mail. Another section of the legislation which would allow "mail-in" voter registration also appears defective because it has no attestation requirement. Alaska law already allows mail-in registration when witnessed by any two individuals over the age of 18 years. We believe that Alaska's attestation requirement does not impose a burden on voter registration, while at the same time it increases the registrant's awareness of the serious nature of the voting laws.

Additionally, the bill provides that a timely by-mail registration is one that is postmarked at least 30 days before an election. In Alaska, use of the postmark rather than a date of receipt has been found to be unreliable in verifying the timeliness of mailed registrations. The Alaska Division of Elections conducted a review of 1,800 absentee by-mail ballots and found that nearly 30 percent of them had no readable postmark. As a result, in response, Alaska

law has recently been amended to provide that a timely by-mail registration must be received at least 30 days before an election. Prior to the amendment, the attestation date also served as alternative "proof" of timely registration when no postmark was evident. The proposed bill would impose an unreliable standard for determining timely registration, while at the same time removing the creditable alternative which the attestation provides.

In addition to my concern regarding federal intrusion into Alaska's voter registration laws, I am equally concerned about the financial burden that passage of S. 874 would impose upon the state. We have determined that the combined annual administrative costs for the Division of Elections and the Department of Public Safety, would come to about $412,000. As an illustration of the financial burden this would impose, our current operating budget for the Divsion of Elections, exclusive of costs directly associated with the conduct of primary and general elections, is $1,454,300. The costs associated with S. 874 would be equivalent to a 28.3 percent increase in the Division of Elections' current operating budget.

In reviewing the registration and population figures prior to each general election since 1978, Alaska has consistently experienced a registration rate well above the national average. According to the state's figures, the lowest registration rate during that time was approximately 78 percent, and in most election years, the rate hovered around the low to mid-80th percentile. Until S. 874 is amended in a way that clearly recognizes and maintains the state's rights to prescribe the manner in which registration programs are to be implemented, I encourage your continued opposition to this bill. Thanks for your consideration of this correspondence.

Sincerely,

STEVE COWPER,
Governor.

ADDITIONAL VIEWS OF MR. HATFIELD

The goal of expanding the opportunities, and eliminating the barriers, to registering to vote in federal elections is one that I share. My home state of Oregon has led the way in making registration a simple and available process.

S. 874 contains a number of provisions that seek to attain this goal on a national basis, and thereby encourage states to adopt similar approaches to the registration of voters. I do not oppose most of these provisions.

However, no one involved in the election process can ignore the potential for abuse and fraud in the registration process. The integrity of our political system depends upon confidence in the results of free elections. That confidence is undermined not only by low voter turnout, but by real—or perceived—corruption of the voting process.

For this reason, in connection with my support for the concept of universal voter registration sought by S. 874, I support protection of the integrity of the voter registration rolls. An amendment proposed by the minority would have required periodic examination of voter rolls to remove deceased persons and those who could be documented to have moved from the voting district. This amendment was not intended to be a "killer" amendment, but a necessary guarantee that the ease of registering to vote promoted by other provisions of the bill would not be manipulated by unscrupulous campaign or electoral officials.

It became clear during the debate of S. 874 in Committee that the majority would not accept this amendment and that the minority did not have the votes to prevail on this amendment. As a result, the bill remains fatally flawed and I could not support reporting it favorably to the Senate.

Should this oversight in S. 874 be corrected, I am ready to give it my approval.

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